This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for **June 2015**, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

MARY JO WHITE, CHAIR

LUIS A. AGUILAR, COMMISSIONER

DANIEL M. GALLAGHER, COMMISSIONER

KARA M. STEIN, COMMISSIONER

MICHAEL S. PIWOWAR, COMMISSIONER

(120 Documents)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9799 / June 1, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75088 / June 1, 2015

ACCOUNTING AND AUDITING ENFORCEMENT Release No. 3659 / June 1, 2015

ADMINISTRATIVE PROCEEDING File No. 3-15815

In the Matter of

DICKSON LEE, CPA

Respondent.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE

I.

The Securities and Exchange Commission ("Commission") deems it appropriate to enter this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 4C[1] and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(iii) of the Commission's Rules of Practice[2] against Dickson Lee ("Lee" or

1 Section 4C provides, in relevant part, that:

> The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

2 Rule 102(e)(1)(iii) provides, in pertinent part, that:

> The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found...to have willfully violated, or willfully aided

"Respondent").

II.

Following the institution of these proceedings on March 27, 2014, 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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[3]:

SUMMARY

This action arises out of a fraudulent scheme by L&L Energy and Dickson Lee to create the appearance that L&L was run by a professional management team and conceal Lee's control of the company. L&L Energy is a Tukwila, Washington-headquartered coal company with all of its operations in China and Taiwan. At all relevant times, it was led by Dickson Lee, its former Chairman of the Board and Chief Executive Officer. From approximately August 2008 to June 2009, L&L and Lee repeatedly and fraudulently misrepresented to the public that it had certain persons serving in critical executive management roles at the company when, in reality, those persons served in no such roles.

First, in its Form 10-K for the fiscal year 2008, L&L falsely represented that Lee's brother served as the company's CEO when, in reality, Lee's brother held the title of CEO in name only while Lee ran the day to day operations of the company. In that same filing, L&L represented that a former company employee ("the purported Acting CFO") had served as the company's Acting Chief Financial Officer when, in reality, the purported Acting CFO had emailed Lee prior to the 2008 Form 10-K and rejected the Acting CFO position. In the company's next three quarterly report filings for 2009, L&L and Lee continued to misrepresent that the purported Acting CFO was in fact the company's Acting CFO. For example, L&L's public filings contained certifications required under the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley) that ostensibly bore the purported Acting CFO's electronic signature when, in reality, the purported Acting CFO had not signed any L&L public filings during this period; did not provide authorization for her signature to be placed on any L&L public filings; and did not perform any of the reviews necessary to have a basis for any of the attestations contained on the Sarbanes-Oxley certifications.

---

[3] 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.

In approximately May 2009, the purported Acting CFO learned that L&L had been falsely representing her as the company's Acting CFO and confronted Lee and the chair of L&L's Audit Committee. In response, Lee separately admitted to the purported Acting CFO and the Audit Committee Chair that the purported Acting CFO had not performed the duties of L&L's Acting CFO, and then directed the Audit Committee Chair to conceal this fact from both the company's Board and the public. Lee maintained his fraudulent scheme by continuing to falsely represent to L&L's Board of Directors that the purported Acting CFO had served as the Acting CFO. Lastly, during the fall of 2009, in connection with an application for L&L to gain listing on NASDAQ, Lee misled NASDAQ by informing it that the company had made all of the required Sarbanes-Oxley certifications – including during the period of the purported Acting CFO's ostensible service. As a result, L&L became listed on the NASDAQ.

RESPONDENT

Dickson Lee, age 66, is the company's founder and has been L&L's Chairman of the Board and Chief Executive Officer since August 2008. Lee previously served as CEO from 1995 through July 2007 and Chairman at various periods. He previously held CPA licenses in Washington and New York (both licenses have lapsed, with the Washington license lapsing in June 2012) and previously audited public companies. Lee obtained his Series 7 license in 1998 and his Series 24 and 27 licenses in 2000. Lee was an associated person with a number of broker dealers until about 2005.

OTHER RELEVANT ENTITIES

L&L is a Tukwila, Washington headquartered coal company with all of its operations in China and Taiwan. The company became public through a reverse merger in August 2001. L&L's common stock is registered with the Commission pursuant to Exchange Act Section 12(b).

FACTS

A. The Purported Acting CFO Rejects Acting CFO Position

1. In August 2007, L&L publicly announced that Lee had resigned his position as L&L's Chairman of the Board and CEO. Lee resigned those positions shortly after he was disciplined by the National Association of Securities Dealers, Inc. ("NASD") and received a one-year suspension of his license for conducting private placement offerings of L&L securities in which the private placement memoranda contained false statements. Lee believed that, if he was an L&L officer, his suspension would impede L&L from becoming listed on a stock exchange.

2. At that time, Lee convinced L&L's Board to install his brother as the CEO of L&L (hereinafter "Lee's brother"). During the one-year period (August 2007 – August 2008) in which Lee's brother held the title of L&L's CEO, however, Lee continued to run the company as he had when he held the title of CEO.

3. In January 2008, L&L's stock became quoted on the Over-The-Counter Bulletin Board ("OTCBB"). In order to gain listing on a larger trading venue, such as NASDAQ, Lee sought to hire a Chief Financial Officer ("CFO").

4. L&L hired a CFO in February 2008, but within two months that person resigned. As L&L sought a replacement CFO, Lee proposed the name of a former employee and L&L director (hereinafter, "the purported Acting CFO") as a candidate for L&L's Acting CFO position during the search for a permanent replacement.

5. In approximately June 2008, Lee discussed engaging a U.S.-based placement agent (the "placement agent") to assist L&L in raising money from investors. This placement agent encouraged L&L to hire a CFO. In a June 18, 2008 email, Lee referred to the purported Acting CFO as a member of the management team that had been requested by the placement agent. In another June 2008 email, Lee wrote that the purported Acting CFO could become L&L's Acting CFO in order to meet the placement agent's "requirement."

6. On June 23, 2008, members of L&L's board and Lee held a meeting. At that meeting, Lee communicated that the purported Acting CFO would be appointed as the company's Acting CFO because the placement agent "suggested that L&L needs to have [an] Acting CFO (a Non-Officer position) as one of the conditions to move L&L's funding forward."

7. On that same day, at Lee's instruction, Lee's assistant sent the purported Acting CFO an email thanking her for becoming L&L's Acting CFO. The purported Acting CFO, however, had never accepted the Acting CFO position.

8. On July 14, 2008, the purported Acting CFO forwarded to Lee the June 23, 2008 email she received from his assistant regarding the Acting CFO position and informed Lee that she was "unable to become L&L Acting CFO as I don't have time to make any contribution to L&L. I need to take care of my own job and my kids as well . . . I wish you could find a more suitable CFO soon."

B. L&L Falsely Represents Lee's Brother and the Purported Acting CFO as the Company's CEO and Acting CFO

9. On August 12, 2008, L&L filed its Form 10-K with the Commission for its fiscal year ended April 30, 2008 (the "2008 Form 10-K"). Lee reviewed the filing before it was made public.

10. L&L, in its 2008 Form 10-K, falsely represented that Lee's brother had performed the functions of the company's CEO when, in reality, Lee continued to perform those functions.

11. Moreover, in that same filing, L&L reported for the first time that the purported Acting CFO had been named as the company's Acting CFO, disclosing that "she is a CPA with experience of both U.S. and China accounting practices. She was a senior auditing manager for

a New York CPA firm with PCAOB qualification, and conducted US GAAP audits for US public listed companies." These representations were false because the purported Acting CFO had rejected the Acting CFO position.

12. L&L's 2008 Form 10-K contained certifications required under Sarbanes-Oxley for the company's principal executive officer and principal financial officer, namely, its CEO and CFO. These certifications contained the electronic signatures of both Lee's brother and the purported Acting CFO by which each of them attested to, among other things, the fact that the 2008 Form 10-K contained no untrue statements of material fact.

13. Neither Lee's brother nor the purported Acting CFO, however, provided any such attestation and neither Lee's brother nor the purported Acting CFO provided any authorization to have their electronic signatures placed on their respective Sarbanes-Oxley certifications.

14. L&L, in its 2008 Form 10-K, also falsely represented that it had – with the participation of its CEO (Lee's brother) and CFO (the purported Acting CFO) – evaluated the effectiveness of the design and operation of its disclosure controls and procedures, and based on such evaluation, the company, its CEO (Lee's brother), and CFO (the purported Acting CFO) concluded that the disclosure controls and procedures were effective.

C. L&L and Lee Continue their Scheme to Falsely Represent the Purported Acting CFO as the Acting CFO

15. On August 25, 2008, after his one-year NASD suspension was over, Lee officially returned to the position of L&L's CEO and Chairman of the Board.

16. On September 15, 2008, L&L filed with the Commission its Form 10-Q for the period ended July 31, 2009 (the "First Quarter 2009 Form 10-Q"). Lee signed the filing. Like the 2008 Form 10-K, the First Quarter 2009 Form 10-Q contained a Sarbanes-Oxley certification that was ostensibly electronically signed by the purported Acting CFO. Moreover, the First Quarter 2009 Form 10-Q also contained the representation that the CEO (Lee) and the purported Acting CFO had evaluated the effectiveness of the design and operation of the company's disclosure controls and procedures and those controls and procedures were effective.

17. The purported Acting CFO, however, did not serve as the company's Acting CFO in any capacity; did not authorize her electronic signature to be placed on the Sarbanes-Oxley certifications; did not perform any of the reviews or functions enumerated on the Sarbanes-Oxley certifications; and did not evaluate the effectiveness of the company's disclosure controls and procedures.

18. The First Quarter 2009 Form 10-Q also contained a Sarbanes-Oxley certification for Lee. In his Sarbanes-Oxley certification, Lee falsely certified that, to his knowledge, L&L's First Quarter 2009 Form 10-Q contained no untrue statements of material fact.

19. In approximately December 2008, L&L retained a U.S.-based investment research firm to write a research report concerning L&L. In late December 2008, the research

firm emailed Lee a draft research report for his review. The research report contained a prominent section on L&L's management team, listed the purported Acting CFO as the company's CFO and stated that the purported Acting CFO "coordinates all accounting for L&L." Lee caused a revised version of the research report to be sent to the research firm with some "minor changes," but did not correct the false statements regarding the purported Acting CFO. This report was published in approximately April 2009 and included the false statements regarding the role of the purported Acting CFO.

20. On December 22, 2008, L&L filed with the Commission its Form 10-Q for the period ended October 31, 2008, and on March 23, 2009, L&L filed with the Commission its Form 10-Q for the period ended January 31, 2009. Lee signed both of these filings. These two public filings again contained false, electronically signed, Sarbanes-Oxley certifications by the purported Acting CFO. Moreover, these two filings contained the false statements concerning the purported Acting CFO's evaluation of the effectiveness of the company's disclosure controls and procedures.

21. These two public filings also contained Lee's own Sarbanes-Oxley certification in which he again falsely certified that, to his knowledge, the Form 10-Qs contained no untrue statements of material fact.

22. As noted above, L&L placed electronic signatures on the public filings to reflect that the purported Acting CFO had signed the requisite Sarbanes-Oxley certifications. The Commission staff requested from L&L, but never received, the actual signature pages bearing the purported Acting CFO's signature for each of the requisite Sarbanes-Oxley certifications.

23. On August 12, 2009, L&L filed its 2009 Form 10-K, which contained Lee's Sarbanes-Oxley certification that, based on his and the CFO's most recent evaluation of the company's internal control over financial reporting, all fraud involving management had been disclosed to the company's auditors and to the company's Audit Committee. This certification was false because Lee had not disclosed to the company's external auditors or the company's entire Audit Committee that the purported Acting CFO was misrepresented in L&L's previous filings as its Acting CFO.

D. Lee Admits to Purported Acting CFO that She Did Not Perform the Work of the Acting CFO

24. In approximately May 2009, the purported Acting CFO became aware that L&L had falsely represented her as the company's Acting CFO in the company's public filings and, on May 6, 2009, sent Lee an email that included her July 14, 2008 email in which she rejected the Acting CFO position. In the email, the purported Acting CFO wrote that she "clearly indicated that [she] would not accept the offer of being the Acting CFO of L&L," and asked Lee for an immediate explanation.

25. On May 13, 2009, Lee emailed the purported Acting CFO and wrote, "[t]here is a misunderstanding of the Acting CFO role . . . Based on your input, your name is removed to please you." The purported Acting CFO replied that – just because she and Lee had known each

other for ten years – it did not mean "that you could use my name, without authorisation, to the file 10K to the U.S. SEC." In response, on May 19, 2009, Lee emailed the purported Acting CFO and separately admitted, "[y]ou did not actually conduct the work as Acting [CFO]."

E. Lee Admits to L&L's Audit Committee Chair That Purported Acting CFO Did Not Serve as Acting CFO

26. On May 21, 2009, the purported Acting CFO emailed Shirley Kiang, who was then the Chair of L&L's Audit Committee and member of its Board of Directors. In the email, the purported Acting CFO told Kiang that she had a "serious and urgent" matter related to L&L's public information made without her knowledge and asked Kiang to investigate.

27. Kiang subsequently contacted Lee and asked whether the purported Acting CFO had actually served as the company's Acting CFO. Lee initially informed Kiang that the purported Acting CFO had served as the company's Acting CFO and was making false allegations in an attempt to obtain money from the company.

28. Kiang asked Lee for evidence to support his assertion that the purported Acting CFO had served as the company's Acting CFO. In response, Lee provided Kiang with a letter that appeared to be addressed to the purported Acting CFO, dated May 28, 2008, and purported to be signed by Lee's brother as the company's CEO. The letter asked the purported Acting CFO to confirm that she had agreed to accept the Acting CFO position and stated that if the company did not receive a response to the letter within ten days, the company would treat her lack of response as her acceptance of the position.

29. This letter, however, was not created on May 28, 2008; was not signed by Lee's brother; and was never sent to the purported Acting CFO. Rather, this letter was created on May 26, 2009 – almost one year after the purported Acting CFO had rejected the Acting CFO position – and was stored in Lee's L&L computer network folder.

30. On June 4, 2009 – after receiving no response from Kiang – the purported Acting CFO emailed Kiang again. The purported Acting CFO again asked Kiang to investigate her allegations, specifically that she was misrepresented in L&L's filings as the company's Acting CFO, and included her July 14, 2008 email to Dickson Lee rejecting the Acting CFO position.

31. After receiving the June 4 email, Kiang again asked Dickson Lee for an explanation. Lee then admitted to Kiang that the purported Acting CFO had not actually served as the company's Acting CFO and that he had used the purported Acting CFO's name on L&L's public filings without the purported Acting CFO's permission. Lee directed Kiang to not disclose this information to anyone, including the company's Board of Directors or the public, and told her that if this information became publicly known, L&L's stock price would drop.

32. After this, Lee continued to falsely represent to the company's Board of Directors that the purported Acting CFO had served as the company's Acting CFO.

33. During the nearly one-year period in which the purported Acting CFO was falsely represented as the company's Acting CFO, L&L raised approximately $750,000 from investors using stock purchase agreements in which L&L expressly attested to the accuracy of its public filings and private placement documents that referred the investor to publicly available additional information about the company.

F. L&L Makes Materially False and Misleading Statements on NASDAQ Application to Gain NASDAQ Listing

34. In approximately September 2009, L&L completed an application to become listed on the NASDAQ. As part of the application process, NASDAQ requested a variety of information, including confirmation that the company had made all of the required Sarbanes-Oxley certifications.

35. L&L, in a communication from Lee, confirmed that the company had made all of the required Sarbanes-Oxley certifications. L&L misled NASDAQ in this communication because it did not inform NASDAQ that its required CFO Sarbanes-Oxley certifications for its 2008 Form 10-K or its three 2009 Form 10-Qs were false. As a result, L&L gained listing on NASDAQ in February 2010

VIOLATIONS

36. By engaging in the conduct described above, Lee willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibits fraudulent conduct in connection with the purchase or sale of securities. Also, by engaging in the conduct described above, Lee willfully aided and abetted and caused violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder.

37. By engaging in the conduct described above, Lee willfully violated Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities.

38. By engaging in the conduct described above, Lee willfully aided and abetted and caused violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, which require issuers of registered securities to file factually accurate annual and quarterly reports. Also, Lee willfully aided and abetted and caused violations of Rule 12b-20 of the Exchange Act, which requires the addition to such reports of further material information necessary to make the required report statements not misleading.

39. By engaging in the conduct described above, Lee willfully violated, and willfully aided and abetted and caused violations of Rule 13a-14 of the Exchange Act, which requires, among other things, that principal executive and financial officers certify that based on their knowledge, the issuer's financial statements are accurate, and that, based on the principal executive and financial officer's most recent evaluation of the company's internal control over financial reporting, they have disclosed all fraud, whether or not material, involving management to the company's auditors and Audit Committee.

40. By engaging in the conduct described above, Lee willfully aided and abetted and caused violations of Rule 13a-15 of the Exchange Act, which requires each issuer's management, with the participation of the company's principal executive officer and principal accounting officer, or persons performing similar functions, to evaluate the effectiveness of the company's disclosure controls and procedures on a quarterly basis.

41. By engaging in the conduct described above, Lee willfully aided and abetted and caused violations of Section 302 of Regulation S-T of the Exchange Act, which requires that (i) a signatory to an electronic filing actually sign the signature page before or at the time of the electronic filing; (ii) the filer retain the original executed document for five years; and (iii) that the filer provide the Commission staff with a copy of the document upon request.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 4C and 21C of the Exchange Act, and Rule 102(e) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondent Lee 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, Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder, Rules 13a-14 and 13a-15 of the Exchange Act, and Section 302 of Regulation S-T of the Exchange Act.

B. Respondent Lee be, and hereby is:

a. barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

b. denied the privilege of appearing or practicing before the Commission pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Commissioner Piwowar
Dissented as to the penalty
for First Bancorp

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75086 / June 1, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3660 / June 1, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16569

In the Matter of **FIRST BANCORP, ANNA HOLLERS, AND TERESA NIXON** **Respondents.**	**CORRECTED ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 against First Bancorp, Anna Hollers and Teresa Nixon ("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, as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1]:

Summary

Over a three year period, First Bancorp failed to disclose related party transactions involving family members of the company's former Chief Operating Officer Anna Hollers, former Chief Loan Officer Teresa Nixon, and a member of its Board of Directors – specifically, Ms. Hollers' husband, Ms. Nixon's daughter and son-in-law, and the Board member's brother. By failing to make these disclosures in its Forms 10-K for fiscal years 2009, 2010 and 2011, First Bancorp violated SEC disclosure rules requiring public companies to disclose such relationships if the amounts involved exceeded $120,000. First Bancorp also failed to have controls and procedures designed to ensure the company disclosed related party transactions as required.

Hollers caused certain of First Bancorp's violations. As COO, she oversaw the process for identifying related party transactions. First Bancorp used a Director and Officer Questionnaire ("D&O Questionnaire") as part of its related party disclosure process that required directors and executive officers to report transactions with family members in which the amounts involved exceeded $120,000 during the prior fiscal year. Hollers was responsible for reviewing the D&O Questionnaires and informing the company's Chief Financial Officer of issues that may require disclosure. Hollers was also a member of First Bancorp's Disclosure Committee. Despite her disclosure responsibilities, Hollers did not adequately familiarize herself with the disclosure rules regarding related party transactions sufficient to ensure that First Bancorp met its disclosure obligations. Moreover, though First Bancorp had paid her husband's law firm over $200,000 in fiscal year 2009 and over $400,000 in fiscal year 2010, Hollers failed to disclose these facts, either in her D&O Questionnaire or otherwise, in connection with the company's preparation of its Forms 10-K for those periods.

Nixon, who was also a member of First Bancorp's Disclosure Committee, caused certain of First Bancorp's reporting violations. Though she knew about company transactions involving her daughter and son-in-law, she failed to report these on her D&O Questionnaires or otherwise disclose them in connection with the company's preparation of its periodic filings.

Respondents

1. **First Bancorp**, a bank holding company, is incorporated in North Carolina and trades on the Nasdaq Global Select Market. First Bancorp owns and operates First Bank, a state-chartered bank with its main office in Southern Pines, North Carolina.

---

[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.

2. **Anna Hollers**, age 64, resides in Candor, North Carolina. From 2005 until she retired from First Bancorp in April 2014, Hollers was the Chief Operating Officer of First Bancorp and First Bank. Hollers served as Corporate Secretary of both entities from 1987 until she retired in 2014. During the relevant period, Hollers was a member of First Bancorp's Disclosure Committee.

3. **Teresa Nixon**, age 57, resides in Sanford, North Carolina. From 1997 until she left First Bancorp in March 2012, Nixon was First Bancorp's Chief Loan Officer. Among other responsibilities, Nixon oversaw the process for the sale, management, and disposition of foreclosed properties acquired from the FDIC through First Bancorp's acquisition of failed banks' assets. During the relevant time period, Nixon was a member of First Bancorp's Disclosure Committee.

FACTS

First Bancorp's Related Party Transaction Disclosure Process

4. Item 404(a) of Regulation S-K requires issuers to describe in their Forms 10-K any transaction exceeding $120,000 in which the registrant was or is to be a participant and in which any related person had or will have a direct or indirect material interest. The instructions to Item 404(a) define related person to include any director or executive officer of a registrant and any immediate family members of a director or executive officer, such as spouses, children, certain in-laws, and siblings.

5. Similarly, Accounting Standards Codification ("ASC") Topic 850, *Related Party Disclosures*, requires companies to include in their financial statements disclosures of material related party transactions. ASC Topic 850-10-05-3 provides that related party transactions include transactions between an entity and its management or members of their immediate families.

6. During the relevant period, First Bancorp directors and executive officers reported related party transactions either by disclosing the transactions to the company's Board of Directors or through the company's annual D&O Questionnaire. Among other things, the D&O Questionnaire asked First Bancorp directors and executive officers to:

> Describe any transaction, or series of transactions … or any currently proposed transaction or series of similar transactions, to which the Company … was, or is, to be a participant in which the amount involved exceeds $120,000 and in which you or any member of your **Immediate Family** had, or will have, a direct or indirect interest.[2]

---

[2] Emphasis in original. The D&O Questionnaire also had an appendix of definitions that defined "Immediate Family" to include "your spouse, parents, stepparents, children, stepchildren, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law and any other person sharing your household (other tenants or employees)."

7. Hollers oversaw the process for identifying related party transactions. She distributed the D&O Questionnaires to the company's directors and executive officers. After the directors and executive officers completed the D&O Questionnaires, they sent them to Hollers, who was responsible for reviewing them to assess whether there were any notable conflicts, issues or transactions. If so, she was responsible for reporting them to First Bancorp's CFO. First Bancorp's CFO would then prepare any required disclosures of related party transactions that Hollers had identified for the company's filings with the Commission.

8. Although First Bancorp relied on Hollers to identify related party transactions, Hollers did not adequately familiarize herself with the disclosure rules regarding related party transactions sufficient to ensure that First Bancorp met its disclosure obligations in its filings with the Securities and Exchange Commission. No one other than Hollers at First Bancorp reviewed the D&O Questionnaires to determine whether the company needed to make related party disclosures. First Bancorp's CFO relied on Hollers to inform him of related party transactions that may have required disclosure so that he could ensure the company complied with its disclosure obligations.

First Bancorp Failed to Report Six Related Party Transactions in its Forms 10-K for Fiscal Years 2009, 2010 and 2011

A. <u>First Bancorp Failed to Disclose Payments to the Law Firm of Hollers' Husband</u>

9. Hollers' husband was a partner at a law firm that had performed legal work for First Bancorp for over thirty years. First Bancorp typically paid the firm less than $15,000 in fees annually for this work. Each year, First Bancorp's Board approved the company's hiring of the law firm. The Board knew Hollers was married to a partner in the firm.

10. In 2008, First Bancorp began to pay the law firm larger amounts for an increased amount of legal work and trustee work related to foreclosure proceedings. These amounts included reimbursed costs related to the trustee work. In fiscal year 2009, First Bancorp paid the law firm a total of $214,754, consisting of $109,745 in fees and $105,009 in reimbursed costs. In fiscal year 2010, First Bancorp paid the firm $407,087, consisting of $195,030 in fees and $212,057 in reimbursed costs.

11. Though Hollers disclosed on her D&O Questionnaires for fiscal years 2009 and 2010 that her husband's law firm did work for First Bancorp, she did not disclose the amount it had received in fees and reimbursed costs, nor did she otherwise inform First Bancorp's Board or CFO that the combined amounts exceeded $120,000. No one other than Hollers reviewed her D&O Questionnaires for the years in question. As a consequence, First Bancorp did not disclose the related party transactions involving Hollers in its Forms 10-K for fiscal years 2009 and 2010 as required by Regulation S-K Item 404(a).

B. First Bancorp's Failures to Disclose Related Party Transactions Involving Nixon

First Bancorp Failed to Disclose Payments to Nixon's Daughter and Son-in-Law for Landscaping Services

12. During fiscal year 2010, First Bancorp paid Southland Landscaping, a company owned and operated by Nixon's daughter and son-in-law, $225,970 for landscaping services on First Bancorp's foreclosed properties. Nixon, who knew that her daughter and son-in-law owned Southland and that it was performing services for First Bancorp, did not disclose this relationship in her D&O Questionnaire or otherwise. Accordingly, First Bancorp did not disclose this related party transaction in its Form 10-K for fiscal year 2010 as required by Regulation S-K Item 404(a).

First Bancorp Failed to Disclose a Home Sale Agreement with Nixon's Daughter and Son-in-Law

13. In its fiscal year 2010 Form 10-K, First Bancorp failed to disclose that it had agreed to sell property to Nixon's daughter and son-in-law. In November 2010, Nixon approved a sales agreement between First Bancorp and her daughter and son-in-law whereby the company contracted to sell them a foreclosed property for $250,000. Nixon did not disclose this agreement in her D&O Questionnaire for fiscal year 2010 or otherwise. Accordingly, First Bancorp did not disclose this related party transaction in its Form 10-K for that year as required by Regulation S-K Item 404(a).

First Bancorp Failed to Disclose a Loan to Nixon's Daughter and Son-in-Law

14. To finance the home purchase described above, First Bancorp loaned $241,000 to Nixon's daughter and son-in-law in May 2011. This loan was required to be separately disclosed as a related-party transaction because it was not made on the same terms as those available to the general public. The loan documents reflected an inaccurate loan-to-value percentage, which, under First Bancorp's policy at the time, should have been based on the property's sale price. The loan underwriting documentation instead used the property's appraisal price. In addition, the loan underwriting documentation failed to disclose the family's prior bankruptcy. The First Bank Regional Executive who approved the loan would not have done so if the loan documents had been factually correct. Nixon did not disclose this loan in her D&O Questionnaire for fiscal year 2011 or otherwise. Although other First Bancorp management learned of the loan to Nixon's daughter and son-in-law as part of its own internal investigation prior to filing its Proxy Statement for fiscal year 2011, the company treated the loan as one in the ordinary course of business and thus failed to adequately disclose this related party transaction in its Form 10-K for fiscal year 2011 as required by Regulation S-K Item 404(a).

C. First Bancorp Failed to Disclose Payments Made to the Brother of One of its Directors

15. First Bancorp also failed to disclose in its Form 10-K for fiscal year 2010 that it had paid a brother of one of First Bancorp's Directors (the "Director") over $120,000.

16. In September 2009, First Bancorp hired the Director's brother as the real estate agent and property manager for a portfolio of foreclosed properties that First Bancorp obtained as a result of its FDIC acquisition of Cooperative Bank's assets in June 2009. In fiscal year 2010, First Bancorp paid the Director's brother $317,686 in commissions for property sales services and reimbursed him $389,000 for out-of-pocket expenses for property management services. At 4.7% of First Bancorp's net income in fiscal year 2010, these combined payments to the Director's brother, which were legitimate business expenses, were material. The payments made to the Director's brother in fiscal year 2010 were required to be disclosed in First Bancorp's Form 10-K because of the sibling relationship between the two individuals.

17. Though he did not know the amounts involved, the Director disclosed that his brother had a relationship with the company in his D&O Questionnaire for fiscal year 2010, and First Bancorp's Board discussed that the Director's brother was performing work for the company during a February 2011 Board meeting. However, First Bancorp did not determine the amounts it paid the Director's brother before it filed its Form 10-K for fiscal year 2010. First Bancorp did not disclose this related party transaction in this filing as required by Regulation S-K Item 404(a) and ASC 850.

Violations

18. As a result of the conduct described above, First Bancorp violated and Nixon and Hollers caused First Bancorp's violations of Exchange Act Section 13(a) and Rule 13a-1 thereunder, which require that issuers of securities registered pursuant to Exchange Act Section 12 file with the Commission, among other things, current and accurate information in annual reports.

19. As a result of the conduct described above, First Bancorp violated and Hollers caused First Bancorp's violation of Exchange Act Rule 13a-15(a), which provides that every issuer of a security registered pursuant to Exchange Act Section 12 must maintain disclosure controls and procedures.[3]

---

[3] Rule 13a-15(e) defines "disclosure controls and procedures" as "controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the [Exchange] Act ... is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the [Exchange] Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosures."

20. As a result of the conduct described above, First Bancorp violated Exchange Act Section 13(b)(2)(B), which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP.

First Bancorp's Remedial Efforts

In determining to accept First Bancorp's Offer, the Commission considered remedial acts promptly undertaken by First Bancorp and cooperation afforded the Commission staff.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. First Bancorp cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 13(b)(2)(B) of the Exchange Act and Rules 13a-1 and 13a-15 thereunder.

B. Anna Hollers cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-15 thereunder.

C. Teresa Nixon cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

D. Within seven days of entry of this Order, First Bancorp shall pay a civil money penalty of $275,000; Hollers shall pay a civil monetary penalty of $15,000; and Nixon shall pay a civil monetary penalty of $20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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) Respondents 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 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 Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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, Respondents agree that in any Related Investor Action, they 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 any of the Respondents 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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 violations by Respondents 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.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75084 / June 1, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16568

In the Matter of **Horizon Wimba, Inc. (n/k/a Hayse Corp.), Interlock Services, Inc., and International Freight Logistics, Ltd.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Horizon Wimba, Inc. (n/k/a Hayse Corp.), Interlock Services, Inc., and International Freight Logistics, Ltd.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Horizon Wimba, Inc. (n/k/a Hayse Corp.) (CIK No. 1272549) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Horizon Wimba is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2004, which reported a net loss of $135,604 from the company's January 5, 2000 inception to September 30, 2004.

2. Interlock Services, Inc. (CIK No. 1096297) is a permanently revoked Nevada corporation located in Ronkonkoma, New York with a class of securities registered with

the Commission pursuant to Exchange Act Section 12(g). Interlock Services is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported a net loss of over $3.9 million for the prior nine months.

3. International Freight Logistics, Ltd. (CIK No. 1180926) is a Delaware corporation located in Lynbrook, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). International Freight is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2005.

B. DELINQUENT PERIODIC FILINGS

4. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

5. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

6. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75083 / June 1, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16567

In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corporation, Respondents.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corporation ("Respondents" or "Merrill").

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. Merrill admits the findings set forth in Section III below, acknowledges that its conduct violated the federal securities laws, admits the Commission's jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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 that:

Summary

1. These proceedings concern Merrill's violations of Regulation SHO (Reg SHO") of the Exchange Act, in connection with its practices relating to its execution of short sales. As described more fully below, the violations arose from two separate issues concerning Merrill's use of its "easy to borrow" lists.

Respondents

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S), headquartered in New York, New York, is dually-registered with the Commission as a broker-dealer and investment adviser. It is a subsidiary of Bank of America Corporation. The activity that is the subject of this recommendation pertains to the broker-dealer side of Merrill's business.

3. Respondent Merrill Lynch Professional Clearing Corporation (MLPro), headquartered in New York, New York, is registered with the Commission as a broker-dealer. MLPro is a wholly-owned subsidiary of MLPF&S.

Background

A. Reg SHO

4. Regulation SHO ("Reg SHO") of the Exchange Act governs short sales. A short sale is any sale of a security which the seller does not own, or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

5. Rule 203(b) of Reg SHO prohibits a broker-dealer from accepting a short sale order in an equity security from another person or effecting a short sale in an equity security for its own account unless the broker-dealer has borrowed the security, entered into a bona-fide arrangement to borrow the security, or has "reasonable grounds" to believe that the security can be borrowed so that it can be delivered on the delivery date. This is generally referred to as the "locate" requirement. Rule 203(b) also requires the broker-dealer to document its compliance with the "locate" requirement.

6. The Commission has articulated that, absent countervailing factors, easy to borrow ("ETB") lists may provide reasonable grounds to believe that the security sold short is available for borrowing as required in Rule 203(b) without having to contact the source of borrowed securities directly. While broker-dealers with lending desks use their own criteria to determine whether or not a security should be included on its ETB list, the information used to

generate the ETB list must be less than 24 hours old, and securities on the list must be readily available such that it would be unlikely that a failure to deliver would occur.[1]

7. Merrill failed to comport with this guidance when executing transactions in reliance on ETB lists in two separate but important ways.

8. First, Merrill's execution platforms were designed to continue accepting short sale orders in reliance on its lending desk's ETB list even where Merrill had determined, through placement of the stock on Merrill's Watch List, that "countervailing factors" existed that rendered Merrill's reliance on the list as a locate source unreasonable. The countervailing factors consisted of Merrill's knowledge of events that occurred throughout the day after the issuance of the ETB list that had, or were deemed likely by Merrill to have, the potential to impact a particular stock's availability such that Merrill added the stock to its Watch List. In recognition of these countervailing factors, Merrill's practice (in accordance with an unwritten policy) was that its lending desk could not rely on the ETB list exclusively to grant "locates" under such circumstances. However, even though Merrill's policy prevented the lending desk from granting locates in such circumstances solely on the basis of the ETB list, Merrill allowed its execution platforms to continue to execute short sales solely in reliance on the ETB list in such circumstances. As a consequence, Merrill's conduct violated Rule 203(b) of Reg SHO in that Merrill purported to rely on ETB list locates that could not provide the requisite reasonable grounds to believe the affected securities could be borrowed for delivery on the delivery date as required under the Rule. Moreover, by recording the ETB list as the locate source with respect to short sale orders accepted and executed after Merrill had already determined to cut off ETB list locates for a security, Merrill further violated Rule 203(b) by failing to document an appropriate locate.

9. Second, because of a flaw in Merrill's systems, in certain instances, Merrill used data that was more than 24 hours old for purposes of constructing its ETB lists. As a result, multiple securities were included on ETB lists on days when they should not have been, leading to Merrill accepting and executing short sale orders based on inappropriate reliance on defective ETB lists, such that Merrill did not have reasonable grounds to believe the security could be borrowed for delivery. Because in some circumstances the ETB list used older data, but Merrill did not institute and maintain procedures reasonably designed to detect the disparity in its own ETB list, Merrill's conduct violated the requirement under Rule 203(b) of Reg SHO. Had Merrill had the proper systems in place, it could have discovered its reliance on ETB lists containing information that was greater than 24 hours old.

B. Merrill's ETB Practice

10. Merrill, as a broker-dealer, executes transactions, including short sales. As such, Merrill is subject to the requirements of Reg SHO.

---

1 *Short Sales,* Exchange Act Release No. 50103 (July 28, 2004), 69 Fed. Reg. 48008 at 48014.

11. Merrill also operates a securities lending desk that provides locates for its customers. Merrill's lending desk routinely communicates with lenders, customers, and brokers in the course of each trading day, and monitors market developments that could impact the availability of securities for locates and settlement.

12. In the course of its duties, Merrill's lending desk determines before the start of each trading day, through application of a proprietary formula, whether a security is "Easy to Borrow." If a security satisfies the formula based on information then known, Merrill includes that security on an ETB list that it generates daily and disseminates to customers and to its own execution platforms early in the morning.

13. Once Merrill includes a security on an ETB list, both the lending desk (through either an automated or manual process) and its own execution platforms rely on the security's presence on the ETB list in order to satisfy Merrill's locate duty under Reg SHO to execute a short sale in that security.

14. As a general practice, Merrill did not redistribute its ETB list to its execution platforms following the original dissemination of the list first thing in the morning notwithstanding any subsequent developments in the marketplace that might impact availability of the stocks on the list.

15. However, on numerous occasions, through the course of the lending desk's ordinary business activity, the firm learned of developments that actually did, or had the potential to, restrict availability in particular stocks, including certain stocks that had been included on the daily ETB list earlier in the morning, prompting Merrill to add the stock to its "Watch List."

16. Merrill's lending desk practices required that if questions developed intraday about availability of a particular stock on the ETB list, the stock would be placed onto a separate list known as the "Watch List." As described in Merrill's "Business Requirements" document, an information technology staff document drafted in consultation with the securities lending desk in describing implementation of a new version of the Watch List in 2009 for the firm's Locates system, Watch List securities are "securities that have limited availability and should not be provided on the ETB's or automated locates as the inventory should be closely managed." Accordingly, for any stock added to the Watch List intraday, the lending desk was no longer permitted to rely on the ETB list for any new locate requests for that stock, but was instead required to find other, non-ETB list, sources for locate requests, such as by contacting a lending source directly. As a result, placing a security on the Watch List removed the security from the ETB list for locate purposes and meant that, in Merrill's estimation, reliance on the ETB list alone did not provide reasonable grounds to believe that the security in question could be borrowed so that it could be delivered on the delivery date.

17. The next day, securities placed on the Watch List during the prior day would not be included in that following day's new ETB list.

18. From at least 2008 to present, however, when a stock was placed on the Watch List due to intraday market developments and, as a result, the lending desk ceased relying on the ETB list to source a locate for that stock, Merrill nevertheless continued to allow its execution platforms to execute short sales in purported reliance on the ETB List.

19. At the times Merrill accepted short sale orders in a security for execution on the basis of the firm's ETB list while the same stock was on the Watch List, the ETB list did not provide the requisite reasonable grounds to believe that the security could be borrowed so that it could be delivered on delivery date because Merrill had information that led its securities lending desk to determine that the ETB list should not be relied on for locates in that security. In sourcing locates to the ETB list for Watch List securities, Merrill did not properly document its compliance with the locate requirement under Reg SHO.

20. For example, on January 17, 2008, Merrill lending desk traders, having determined that a security could no longer reasonably be considered ETB, placed a stock on the Watch List. As the lending desk traders were seeking supply from individual lenders, the lenders were telling Merrill that they had no shares available, with messages such as "no good," "I am sorry, nothing available," and "short shares." With this knowledge, however, Merrill allowed its execution platforms to continue to execute short sales totaling 46,617 shares of the same security in reliance on the ETB list.

21. Similarly, on September 8, 2008, during the heart of the financial crisis, Merrill lending desk traders determined that a security could no longer reasonably be considered ETB and placed the stock in question on the Watch List. Mid-day, Merrill traders recognized with respect to that security, "Up to this point banks and brokers still aren't willing to lend any stock." Nevertheless, Merrill's execution platforms executed short sales totaling 1,358,036 shares of the security, absent reasonable grounds to do so, in reliance on the ETB list.

22. On May 22, 2012, Merrill's lending desk determined that a security could no longer be considered ETB and placed the stock in question on the Watch List, requiring a manual locate for all short sale orders other than those placed through the execution platforms. The stock was one in which Merrill saw that short-selling demand had "increased significantly" after a large plunge in the stock price; that the available borrow had "tightened throughout the day;" that borrow rates were "as deep as neg. 2%;" that short interest was more than 25% of the float; and that the "street is starting to experience recalls." Nonetheless, Merrill's execution platforms executed short sales totaling 840,080 shares of the security, absent reasonable grounds to do so, in reliance on the ETB list, which was the documented locate source.

23. On January 14, 2014, Merrill's lending desk determined that a security could no longer be considered ETB and placed the stock in question on the Watch List, requiring a manual locate for all short sale orders other than those placed through the execution platforms. The stock was one in which Merrill saw that "[s]hort demand spiked;" borrow rates were "trending deeper," with shares for lending trading "in limited size; short interest was approximately 20% of the float; and recall activity "has increased." Nonetheless, Merrill's execution platforms executed short sales totaling 75,544 shares of the security, absent reasonable grounds to do so, in reliance on

the ETB list, which was the documented locate source.[2]

24. Since approximately January 2010, Merrill lending desk traders who place securities on the Watch List must record a "Reason Code" indicating the circumstances underlying the decision for Watch List inclusion. The list of possible Reason Codes includes situations such as "Bad Feeds Limited," "Corp Action," "Large Fails," "No Borrow," "Recalls," "Special Div," and "HTB" [Hard to Borrow]. Numerous Watch List securities since then have been recorded with those codes and others. Merrill did not disclose this information to the staff of the Division of Enforcement (the "Staff") until the Staff learned about the codes from a witness during testimony.

25. In April 2014, at a time when Merrill was aware of the ongoing Staff investigation into Merrill's lending desk practices and the Watch List, Merrill convened a meeting to discuss changing the Reason Codes, with discussion focusing on using a generic non-descriptive code to replace codes that explicitly identified borrowing difficulty as the grounds for Watch List placement.

26. Following that discussion, lending desk traders were instructed to switch all current Reason Codes in their database to "Other" and to only use the "Other" code when placing any new securities on the Watch List. Accordingly, although securities that were on the Watch List as of the end of April 2014 do not presently have specific Reason Codes associated with them, the complete audit trail reflects that those securities had been given a specific Reason Code when originally placed on the list.

27. Merrill's acceptance of new short sale orders in purported reliance on the firm's ETB list after having learned of facts indicating that such reliance was no longer reasonable constituted a violation of Rule 203(b) of Reg SHO, because the orders were accepted without reasonable grounds to believe the security could be borrowed and those locates were inaccurately documented with an "ETB List" locate reference.

28. Merrill has informed the Staff that it is implementing systems enhancements pursuant to which its lending desk will notify its execution platforms when a stock is added to the Watch List and its execution platforms will then stop relying on the Merrill ETB list as the locate source when accepting short sale orders for that stock.

---

2 These are but a few of the many examples from the documents produced to the Division that demonstrate that throughout the relevant period, Merrill was allowing its execution platforms to use an ETB List locate for short sales, even after securities had been placed on the Watch List by Merrill stock lending desk personnel because of concerns about diminishing availability of the stock for borrowing.

C. Merrill's "Stale Feed" Problems

29. Merrill has regularly received electronic availability feeds and messages that it uses for determining whether a security should be included on the firm's ETB list.

30. If a lender were to submit availability for a security one day, but then submit nothing the following day, the systems were designed to interpret the lack of a submission to mean that the particular lender had no availability.

31. However, due to a flaw in Merrill's system, if a lender simply omitted a security from its list, rather than interpreting the omission to mean that the lender had no availability, under certain circumstances the system would look back to the last known number submitted from that lender and incorporate that value in its assessment of the overall availability of the security.

32. Because of this flaw, Merrill's systems in certain instances inadvertently used data that was older than 24 hours old for purposes of constructing its ETB lists. At times, the inclusion of the stale feed data resulted in securities being included on an ETB list when they otherwise should not have been. Merrill, in turn, relied on its ETB list for executing short sales in certain of these securities, in violation of Reg SHO's locate requirement.

33. Personnel at Merrill became aware of this problem in 2008 and attempted to fix it. However, various iterations of the problem persisted and the firm did not completely eradicate "stale" availability data from its systems until 2012.

34. Because Merrill could have discovered and prevented its reliance on ETB lists containing information greater than 24 hours old, but did not institute and maintain procedures reasonably designed to do so, its reliance on such ETB lists violated Rule 203(b) of Reg SHO.

Violations

35. As a result of the conduct described above, Merrill willfully[3] violated Rule 203(b) of Regulation SHO.

Undertakings

36. Respondents have undertaken to:

A. Retain, at Respondents' expense and within thirty (30) days of the issuance of this Order, a qualified independent consultant (the "Consultant") not unacceptable to the Staff.

---

[3] A willful violation of the securities laws means merely "'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.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Respondents shall require the Consultant to conduct a comprehensive review of their policies, procedures and practices with respect to their acceptance of short sale orders for execution or effecting of short sales in reliance on Merrill's ETB list and Merrill's procedures to monitor compliance therewith, to satisfy its obligations under Rule 203(b) of Reg SHO to (i) accept short sale orders or effect short sales in equity securities only if it has borrowed the securities or entered into a bona fide arrangement to borrow the securities or has reasonable grounds to believe that securities can be borrowed for delivery when due; and (ii) document compliance with Rule 203(b)(1).

B. Cooperate fully with the Consultant, including providing the Consultant with access to its files, books, records, and personnel as reasonably requested for the review, obtaining the cooperation of employees or other persons under Merrill's control, and permitting the Consultant to engage such assistance (whether clerical, legal, technological, or of any other expert nature) as necessary to achieve the purposes of the retention.

C. Require the Consultant to complete its review and submit a written preliminary report ("Preliminary Report") to Merrill and Commission staff within ninety (90) days of the issuance of this Order. Merrill shall require that the Preliminary Report address the issue described in paragraph A above, include a description of the review performed, the conclusions reached, recommendations for any changes in or improvements to Merrill's policies and procedures, and a procedure for implementing such recommended changes.

D. Within ninety (90) days of receipt of the Preliminary Report, adopt and implement all recommendations contained in the Preliminary Report; provided, however, that as to any recommendation that Merrill considers to be, in whole or in part, unduly burdensome or impractical, Merrill may submit in writing to the Consultant and Commission staff, within thirty (30) days of receiving the Preliminary Report, an alternative policy, practice, or procedure designed to achieve the same objective or purpose. Within forty-five (45) days of receiving the Preliminary Report, Merrill and the Consultant shall attempt in good faith to reach an agreement relating to each recommendation that Merrill considers to be unduly burdensome or impractical. Within fifteen (15) days after the discussion and evaluation by Merrill and the Consultant, Merrill shall require that the Consultant inform Merrill and Commission staff of the Consultant's final determination concerning any recommendation that Merrill considers unduly burdensome or impractical, and Merrill shall abide by the determinations of the Consultant and adopt and implement all recommendations within the 90-day time period set forth in this paragraph.

E. Within fourteen (14) days of Merrill's adoption of all of the recommendations that the Consultant deems appropriate, certify in writing to the Consultant and Commission staff that Merrill has adopted and implemented all of the Consultant's recommendations and that Merrill has established policies, practices, and procedures consistent with its obligations under Rule 203(b).

F. Require that the Consultant review Merrill's revised policies, practices, and procedures for the six month period following implementation of the Consultant's recommendations, and require that the Consultant submit a written final report ("Final Report") to

Merrill and Commission staff within thirty (30) days after the one-year anniversary of the issuance of this Order. The Final Report shall (i) describe the review made of Merrill's revised policies, practices, and procedures; (ii) describe how Merrill is implementing, enforcing, and auditing compliance with the policies, practices, and procedures; and (iii) provide an opinion of the Consultant concerning whether Merrill is adequately implementing, enforcing, and auditing compliance with the policies, practices, and procedures.

G. Require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Merrill, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which the Consultant is affiliated or of which the Consultant is a member, and any person engaged to assist the Consultant in performance of the Consultant's duties under this Order shall not, without prior written consent of Commission staff in the New York Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Merrill, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

H. To ensure the independence of the Consultant, Merrill shall not have the authority to terminate the Consultant without prior written approval of Commission staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

I. Within fourteen (14) days after the one-year anniversary of the issuance of this Order, certify in writing to Commission staff that as of the one-year anniversary date Merrill has continued to implement and enforce all of the Consultant's recommendations and has continued to maintain policies, practices, and procedures consistent with its obligations under Rule 203(b).

J. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Assistant Director Adam S. Grace, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

37. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

IV.

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

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

A. Respondents cease and desist from committing or causing any violations and any future violations of Rule 203(b) of Regulation SHO.

B. Respondents are censured.

C. Respondents shall, within fifteen (15) days of the entry of this Order, pay disgorgement, which represents profits gained as a result of the conduct described herein, of $1,566,245.67 and prejudgment interest of $334,564.65 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondents 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) Respondents 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 Merrill 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 Andrew M. Calamari, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

D. Respondents shall, within fifteen (15) days of the entry of this Order, pay a civil money penalty in the amount of $9 million to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondents 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) Respondents 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 Merrill 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 Andrew M. Calamari, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

E. Respondents shall comply with the undertakings enumerated in paragraph 36 above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75081 / June 1, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16565

In the Matter of **BARRY HAWK,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) 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) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Barry Hawk ("Hawk" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") that 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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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[1] that:

---

[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.

Summary

These proceedings arise out of a fraudulent scheme in which insiders of publicly traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

Respondent

1. Respondent, age 46, a resident of Woodmere, New York, was the Managing Director of Status Equities LLC, and was purportedly in the business of bringing private companies public and assisting public companies in finding sources of funding. He was also the President and Chief Executive Officer ("CEO") of Arctic Enterprises, Inc. ("Arctic Enterprises"), a private company, and Strategic Rare Earth Metals, Inc. ("Strategic Rare Earth"), a publicly traded company. Respondent participated in offerings of Strategic Rare Earth and Connectyx Technologies Corp. ("Connectyx") stock, which are penny stocks. Hawk was charged with one count of wire fraud on July 7, 2014 and pleaded guilty to that charge on August 13, 2014 in *U.S. v. Hawk*, 14-CR-10199-MLW (D. Mass.).

Other Relevant Entities and Individuals

2. Strategic Rare Earth Metals, Inc. is a Nevada corporation with its principal place of business in Henderson, Nevada. It is purportedly a holding company for businesses that engage in mining and processing granite in China. Its securities had been registered with the Commission under Exchange Act Section 12(g), but it filed a Form 15-12G on June 27, 2008 terminating its securities registration. Strategic Rare Earth's common stock is publicly quoted on OTC Link under the symbol "SREH."

3. Connectyx Technologies Corp. is a Florida corporation with its principal place of business in Palm City, Florida. Connectyx is in the business of providing medical technologies and supplies. Its stock is publicly quoted on OTC Link under the symbol "CTYX."

4. Ronald Lawrence Schuman ("Schuman"), age 59, of Palm City, Florida was the President and CEO of Connectyx. Schuman was charged with one count of conspiracy to commit wire fraud on February 27, 2014 and pleaded guilty to that charge on May 20, 2014 in *U.S. v. Schuman*, 14-CR-10053-MLW (D. Mass.).

Background

5. On or about September 12, 2011, Hawk, Schuman, and an individual serving as a cooperating witness for the Federal Bureau of Investigation ("CW") participated in a telephone conference call, during which they discussed the possibility of the Fund Manager

investing Fund monies in the stock of Hawk's client Connectyx in exchange for a secret fifty percent kickback of the invested monies.

6. On or about September 14, 2011, Hawk met alone with the Fund Manager and CW, during which the Fund Manager explained to Hawk that the Fund Manager would invest up to $5 million in publicly traded companies, with fifty percent of that investment kicked back to the Fund Manager immediately, and that the Fund did not know about the kickback arrangement. Hawk inquired about his compensation for bringing companies to the Fund Manager, and the Fund Manager agreed to pay Hawk ten percent of the Fund Manager's kickback payments. Hawk told the Fund Manager that, in addition to Connectyx, Hawk had another client that might be interested in the Fund Manager's funding arrangement.

7. On or about September 14, 2011, after Hawk met with the Fund Manager and CW alone, Schuman joined them (the "September 14 Meeting"). During the meeting, the Fund Manager explained to Hawk and Schuman that the Fund Manager was prepared to invest Fund monies of up to $5 million in Connectyx in exchange for a secret fifty percent kickback to the Fund Manager, enabling the Fund Manager to pocket half of the money he was supposedly investing on behalf of the Fund. Hawk and Schuman were informed that the Fund was not to be told of the kickback.

8. At the September 14 Meeting, the Fund Manager also explained the mechanics of the funding, informing Hawk and Schuman that while the Fund Manager could commit to an investment of $5 million of the Fund's money with $2.5 million being kicked back to the Fund Manager, the Fund Manager would not invest the entire amount at once. The Fund Manager told Hawk and Schuman that he would invest the money over time in tranches, or installments, of increasing amounts.

9. At the September 14 Meeting, the Fund Manager further discussed with Hawk and Schuman the mechanics of how monies would be kicked back to the Fund Manager. The Fund Manager told Hawk and Schuman that Connectyx would execute a consulting agreement with one or more nominee consulting companies that the Fund Manager purportedly controlled, but that the Fund Manager would not actually provide any consulting services. Hawk and Schuman were told that invoices would be issued by the Fund Manager's nominee company to Connectyx in order to disguise the kickbacks. Schuman agreed to the kickback arrangement.

10. In or about September and October 2011, Connectyx received two interstate wire payments – in the amounts of $15,000 and $30,000 respectively – purportedly from the Fund's bank account. Connectyx also made two interstate wire kickback payments in the amounts of $7,500 and $15,000 respectively to an account in the name of one of the Fund Manager's nominee companies.

11. On or about September 23, 2011, in accordance with wiring instructions provided by Hawk, $750 was sent by wire transfer from a Citizens Bank account that was held in the name of one of the Fund Manager's purported nominee companies to a bank account in New

York. This wire transfer represented Hawk's ten percent portion of the Fund Manager's first kickback payment from Schuman.

12. On or about September 27, 2011, Schuman caused a stock certificate representing the purchase by the Fund of 500,000 Connectyx shares to be sent to the Fund Manager.

13. On or about October 20, 2011, in accordance with wiring instructions provided by Hawk, $1,500 was sent by wire transfer from a Citizens Bank account which was held in the name of one of the Fund Manager's nominee companies in Massachusetts to a bank account in New York. This wire transfer represented Hawk's ten percent portion of the Fund Manager's second kickback payment from Schuman.

14. On or about October 18, 2011, Schuman caused a stock certificate representing the purchase by the Fund of 600,000 Connectyx shares to be sent to the Fund Manager.

15. In or about September 2011, Hawk introduced the Fund Manager to an individual ("SP") who was President and CEO of Company A to discuss funding for Company A, an entity whose common stock was publicly quoted on OTC Link. Hawk and SP met with CW and the Fund Manager on or about September 21, 2011, at which time the Fund Manager described the details and mechanics of the funding and kickback arrangement. SP agreed to the kickback arrangement.

16. In or about September and October, 2011, Company A received two wire payments – in the amounts of $16,000 and $32,000, respectively – purportedly from the Fund's bank account, and it made two wire kickback payments in the amounts of $8,000 and $16,000, respectively, to an account in the name of one of the Fund Manager's purported nominee companies.

17. On or about October 5, 2011, in accordance with wiring instructions provided by Hawk, $800 was sent by wire transfer from a Citizens Bank account that was held in the name of one of the Fund Manager's purported nominee companies in Massachusetts to a bank account in New York. This wire transfer represented Hawk's ten percent portion of the Fund Manager's first kickback payment from SP.

18. On or about September 27, 2011, SP caused a stock certificate representing the purchase by the Fund of 11,429 Company A shares to be sent to the Fund Manager.

19. On or about October 26, 2011, in accordance with wiring instructions provided by Hawk, $1,600 was sent by wire transfer from a Citizens Bank account that was held in the name of one of the Fund Manager's purported nominee companies in Massachusetts to a bank account in New York. This wire transfer represented Hawk's ten percent portion of the Fund Manager's second kickback payment from SP.

20. In or about October 2011, SP caused a stock certificate representing the purchase by the Fund of 20,000 Company A shares to be sent to the Fund Manager.

21. In or about October 2011, Hawk introduced the Fund Manager to an individual ("CG") who was the President and CEO of Company B to discuss possible funding of Company B, whose common stock was publicly quoted on OTC Link. Hawk and CG met with CW and the Fund Manager on or about October 21, 2011, at which time the Fund Manager described the details and mechanics of the funding and kickback arrangement. CG agreed to the kickback arrangement, but no monies were sent to Company B by the Fund prior to the completion of the FBI's undercover investigation.

22. In or about October 2011, in recorded telephone conversations and meetings, Hawk and the Fund Manager discussed using the funding/kickback arrangement for Strategic Rare Earth. Hawk intended to combine his Arctic Enterprises entity with the publicly-traded Strategic Rare Earth.

23. Thereafter, Hawk sent the Fund Manager documents related to the kickback transaction, including a fraudulent consulting agreement between Arctic Enterprises and one of the Fund Manager's nominee consulting companies, and a stock purchase agreement between Strategic Rare Earth and the Fund for the purchase of 300,000 shares.

24. On or about October 26, 2011, in accordance with wiring instructions provided by Hawk, $15,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to an Arctic Enterprises corporate bank account. This wire transfer represented the first tranche of funding to Strategic Rare Earth.

25. On or about November 4, 2011, Hawk caused $7,500 to be sent by wire transfer from an Arctic Enterprises corporate bank account to a Citizens Bank account that was held in the name of one of the Fund Manager's nominee companies. This wire transfer represented Hawk's kickback to the Fund Manager from the first tranche of funding to Strategic Rare Earth.

26. As a result of the conduct described above, Hawk willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

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

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

A. Respondent Hawk shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Hawk be, and hereby is:

prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; 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.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75080 / June 1, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16564

In the Matter of **GERARD HARYMAN,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND NOTICE OF HEARING**

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) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Gerard Haryman ("Respondent" or "Haryman").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent, age 70, a resident of Lake Worth, Florida, was a consultant to and investor in A Clean Slate, Inc. ("Clean Slate"), a publicly-traded company that provides financial services and specialized in debt relief and financial recovery services. Respondent participated in an offering of Clean Slate stock, which is a penny stock. Respondent was charged with two counts each of mail fraud and wire fraud and one count of conspiracy to commit securities fraud on March 21, 2014 and pleaded guilty to all counts on May 2, 2014 in *U.S. v. Haryman*, 14-CR-10077-RGS (D. Mass.). On November 13, 2014, he was sentenced to 1 day in prison and 3 years' supervised release. He was also ordered to pay a $500.00 special assessment and $24,000 in restitution. On November 21, 2014, Haryman was ordered to forfeit $24,000.

B. OTHER RELEVANT ENTITIES

1. A Clean Slate, Inc. is a Delaware corporation with its principal place of business in Palm Beach, Florida that provides financial services and specializes in debt relief and financial recovery services. Its securities had been registered with the Commission under Exchange Act Section 12(g), but Clean Slate filed a Form 15-12G on April 13, 2012 terminating its securities registration. Clean Slate's securities are publicly quoted on OTC Link under the symbol "DRWN," but the OTC Markets website contains a warning that the company may not be making material information publicly available.

C. KICKBACK SCHEME

1. These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

2. At some point prior to September 28, 2011, an individual serving as a cooperating witness for the Federal Bureau of Investigation ("CW") arranged for Haryman and another individual ("R.G.") to meet with the Fund Manager to discuss funding for Clean Slate.

3. On or about September 28, 2011, Haryman and R.G. met with the Fund Manager and CW to discuss a potential investment of the Fund's monies in Clean Slate in exchange for a fifty percent kickback to the Fund Manager (the "September 28 Meeting").

4. Haryman and R.G. indicated that they were both willing to enter into the kickback arrangement.

5. At the September 28 Meeting, the Fund Manager, Haryman, R.G., and CW also discussed the mechanics of the funding. Haryman and R.G. were informed that the Fund Manager would begin by investing smaller amounts in Clean Slate, while planning to increase the funding in installments, or tranches, in the future.

6. At the September 28 Meeting, the Fund Manager further discussed with Haryman and R.G. the mechanics of the kickbacks to the Fund Manager. The Fund Manager explained to Haryman and R.G. that Haryman and R.G. would be sending the kickbacks to one or more companies that the Fund Manager himself controlled. The Fund Manager discussed with Haryman and R.G. that Clean Slate would execute consulting agreements with one or more of the Fund Manager's companies, and Haryman and R.G. would pay the relevant company owned by the Fund Manager an amount equal to fifty percent of Fund monies invested in Clean Slate as purported fees for consulting services that would not, in fact, be rendered. The Fund Manager further explained to

Haryman and R.G. that the Fund would not know about these kickbacks paid to him through such sham consulting agreements. After the Fund Manager had explained the scheme, Haryman and R.G. agreed to enter into the kickback arrangement.

7. On various dates between on or about September 29, 2011 and on or about November 2, 2011, Haryman and R.G. sent the Fund Manager documents related to the kickback transactions, including purported consulting agreements between Clean Slate and the Fund Manager's nominee consulting companies and phony invoices in the name of the Fund Manager 's nominee consulting companies.

8. On or about October 5, 2011, $16,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts, purportedly belonging to the Fund, to a corporate bank account of Clean Slate outside of Massachusetts. The wire transfer represented the first tranche of funding for Clean Slate.

9. On or about October 6, 2011, Haryman and R.G. caused $8,000 to be sent by wire transfer from a corporate bank account of Clean Slate outside of Massachusetts to a bank account maintained in Boston, Massachusetts, purportedly belonging to one of the Fund Manager's nominee companies. This wire transfer represented Haryman and R.G.'s kickback to the Fund Manager from the first tranche of funding for Clean Slate.

10. On or about October 13, 2011, Haryman and R.G. caused a stock certificate representing the shares purchased by the Fund in Clean Slate to be sent to the Fund Manager.

11. On or about October 20, 2011, $32,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts, purportedly belonging to the Fund, to a corporate bank account of Clean Slate outside of Massachusetts. This wire transfer represented the second tranche of funding for Clean Slate.

12. On or about October 21, 2011, Haryman and R.G. caused $16,000 to be sent by wire transfer from a corporate bank account of Clean Slate outside of Massachusetts to a bank account maintained in Boston, Massachusetts, purportedly belonging to one of the Fund Manager's nominee companies. This wire transfer represented Haryman and R.G.'s kickback to the Fund Manager from the second tranche of funding to Clean Slate.

13. On or about October 24, 2011, Haryman and R.G. caused phony invoices for consulting services that were never performed to be sent to the Fund Manager by electronic mail. These phony invoices related to the monies Haryman and R.G. caused to be kicked back to the Fund Manager on or about October 6, 2011, and October 21, 2011, respectively.

14. On or about October 28, 2011, Haryman and R.G. caused a stock certificate representing the additional shares purchased by the Fund in Clean Slate to be sent to the Fund Manager.

15. On or about November 2, 2011, Haryman and R.G. caused phony invoices for consulting services that were never performed to be sent to the Fund Manager by electronic mail. These phony invoices related to the monies Haryman and R.G. agreed to kick back to the Fund Manager from a proposed third tranche of funding for Clean Slate. This proposed third tranche of funding did not, ultimately, occur.

D. VIOLATIONS

1. As a result of the conduct described above, Haryman willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement, and civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75082 / June 1, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16566

In the Matter of RONALD LAWRENCE SCHUMAN, Respondent.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) 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) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Ronald Lawrence Schuman ("Schuman" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") that 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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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[1] that:

[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.

Summary

These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

Respondent

1. Respondent, age 59, of Palm City, Florida was the President and Chief Executive Officer of Connectyx Technologies Corp. ("Connectyx"), a publicly traded company. Respondent participated in an offering of Connectyx stock, which is a penny stock. Respondent was charged with one count of conspiracy to commit wire fraud on February 27, 2014 and pleaded guilty to that charge on May 20, 2014 in *U.S. v. Schuman*, 14-CR-10053-MLW (D. Mass.).

Other Relevant Entities and Individuals

2. Connectyx Technologies Corp. is a Florida corporation with its principal place of business in Palm City, Florida. Connectyx is in the business of providing medical technologies and supplies. Its stock is publicly quoted on Pink OTC Markets, Inc. under the symbol "CTYX."

3. Barry Hawk ("Hawk"), age 46, a resident of Woodmere, New York, was the Managing Director of Status Equities LLC and was purportedly in the business of bringing private companies public and assisting public companies in finding sources of funding. He was also the President and Chief Executive Officer of Arctic Enterprises, Inc. and Strategic Rare Earth Metals, Inc. Hawk was charged with one count of wire fraud on July 7, 2014 and pleaded guilty to that charge on December 2, 2014 in *U.S. v. Hawk*, 14-CR-10199-MLW (D. Mass.).

Background

4. At some time prior to September 14, 2011, Hawk arranged for Schuman to meet with the Fund Manager to discuss funding for Connectyx. On or about September 12, 2011, Schuman, Hawk, and an individual who was serving as a cooperating witness for the Federal Bureau of Investigation ("CW") participated in a telephone conference call, during which they discussed the possibility of the Fund Manager's investing Fund monies in Connectyx in exchange for a secret fifty percent kickback of the invested monies.

5. On or about September 14, 2011, Schuman and Hawk met with the Fund Manager and CW (the "September 14 Meeting"). The Fund Manager explained to Schuman and Hawk that the Fund Manager was prepared to invest Fund monies of up to $5 million in Connectyx in exchange for a secret fifty percent kickback to the Fund Manager, enabling the Fund Manager to pocket half of the money he was supposedly investing on behalf of the Fund. Schuman and Hawk were informed that the Fund was not to be told of the kickback.

6. At the September 14 Meeting, the Fund Manager also explained the mechanics of the funding, informing Schuman and Hawk that while the Fund Manager could commit to an investment of $5 million of the Fund's money with $2.5 million being kicked back to the Fund Manager, the Fund Manager would not invest the entire amount at once. The Fund Manager told Schuman and Hawk that he would invest the money over time in tranches, or installments, of increasing amounts.

7. At the September 14 Meeting, the Fund Manager further discussed with Schuman and Hawk the mechanics of how monies would be kicked back to the Fund Manager. The Fund Manager arranged with Schuman that Connectyx would execute a consulting agreement with one or more nominee consulting companies that the Fund Manager purportedly controlled, but that the Fund Manager would not actually provide any consulting services. Schuman and Hawk were told that invoices would be issued by the Fund Manager's nominee company to Connectyx in order to disguise the kickbacks. At the September 14 Meeting, Schuman agreed to the kickback arrangement.

8. On various dates between on or about September 14, 2011 and in or about November 2011, Schuman sent the Fund Manager documents related to the kickback transaction, including a fraudulent consulting agreement between Connectyx and the Fund Manager's nominee consulting company and a stock purchase agreement between Connectyx and the Fund.

9. On or about September 20, 2011, in accordance with wiring instructions provided by Schuman, $15,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts purportedly belonging to the Fund to a Connectyx corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to Connectyx.

10. On or about September 20, 2011, Schuman caused $7,500 to be sent by wire transfer from a Connectyx corporate bank account outside of Massachusetts to a bank account maintained in Boston, Massachusetts purportedly belonging to one of the Fund Manager's nominee companies. This wire transfer represented Schuman's kickback to the Fund Manager from the first tranche of funding to Connectyx.

11. On or about September 21, 2011, Schuman caused a stock certificate representing the purchase by the Fund of 500,000 Connectyx shares to be sent to the Fund Manager.

12. On or about October 11, 2011, in accordance with wiring instructions provided by Schuman, $30,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts purportedly belonging to the Fund to a Connectyx corporate bank account outside of Massachusetts. This wire transfer represented the second tranche of funding to Connectyx.

13. On or about October 12 and 14, 2011, Schuman caused two wire transfers of $7,500 each to be sent from a Connectyx corporate bank account outside of Massachusetts to a

bank account maintained in Boston, Massachusetts purportedly belonging to one of the Fund Manager's nominee companies. These two wire transfers represented Schuman's $15,000 kickback to the Fund Manager from the second tranche of funding to Connectyx.

14. On or about October 12, 2011, Schuman caused a stock certificate representing the purchase by the Fund of 600,000 Connectyx shares to be sent to the Fund Manager.

15. As a result of the conduct described above, Schuman willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

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

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

A. Respondent Schuman shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Schuman be, and hereby is:

prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] for a period of five (5) years from entry of this Order; 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 five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission. Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4100 / June 1, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16563

In the Matter of BENJAMIN LEE GRANT, Respondent.	:	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Benjamin Lee Grant ("Grant" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("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 in which the Commission is a party, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Sections III.1 to III.3 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Grant lives in Boston, Massachusetts. Since 2005, he has been the sole owner of Sage Advisory Group, LLC ("Sage"), a Massachusetts limited liability company. Sage registered with the Commission as an investment adviser in July 2005.

2. On May 27, 2015, a final judgment was entered by consent against Grant in the civil action entitled *Securities and Exchange Commission v. Sage Advisory Group, LLC et al.*, Case No. 1:10-cv-11665-GAO, in the United States District Court for the District of Massachusetts (the "2010 Action"). The final judgment permanently restrained and enjoined Grant from violating Sections 206(1), 206(2), 206(4) and 204A of the Advisers Act and Rules 206(4)-7 and 204A-1 thereunder. The Commission's complaint in the 2010 Action alleged that Grant made material misrepresentations and omissions to his former brokerage customers in order to induce them to become clients of Sage, his new investment advisory firm. On August 13, 2014, a jury returned a verdict for the Commission on its claims that Grant violated Sections 206(1), 206(2), 206(4), and 204A of the Advisers Act and Rules 206(4)-7 and 204A-1.

3. On May 27, 2015, a final judgment was entered by consent against Grant in the civil action entitled *Securities and Exchange Commission v. John Alexander Grant et al.*, Case No. 1:11-cv-11538-GAO, in the United States District Court for the District of Massachusetts (the "2011 Action"). The final judgment permanently restrained and enjoined Grant from violating Sections 206(1), 206(2) and 207 of the Advisers Act. The Commission's complaint in the 2011 Action alleged that Grant's father was associated with Sage, and that Grant made material misrepresentations and omissions concerning his father's prior disciplinary history, which included: (i) a permanent injunction entered by the United States District Court for the District of Massachusetts against future violations of certain registration and anti-fraud provisions of the federal securities laws; (ii) an administrative order issued by the Commission that barred him from associating with a broker-dealer or investment adviser; (iii) a conviction for bankruptcy fraud; and (iv) a temporary suspension from the practice of law. When Grant consented to entry of a final judgment in the 2011 Action, he admitted that he had violated Sections 206(1), 206(2), and 207 of the Advisers Act.

IV.

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

Accordingly, it is hereby ORDERED, pursuant to Section 203(f) of the Advisers Act, that Respondent Grant is barred from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization acting.

By the Commission.

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75090 / June 2, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16571

In the Matter of **Anticus International Corp.,** **China Marketing Media Holdings, Inc.,** **Cigma Metals Corp., and** **LL&E Royalty Trust,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Anticus International Corp., China Marketing Media Holdings, Inc., Cigma Metals Corp., and LL&E Royalty Trust.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Anticus International Corp. (CIK No. 1192494) is a revoked Nevada corporation located in Montreal, Quebec, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Anticus International is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of $215,273 for the prior nine months. As of May 28, 2015, the company's stock (symbol "ATCI") was quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link"), had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

9 of 120

2. China Marketing Media Holdings, Inc. (CIK No. 1353307) is a forfeited Texas corporation located in Beijing, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China Marketing Media Holdings is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $871,846 for the prior nine months. As of May 28, 2015, the company's stock (symbol "CMKM") was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Cigma Metals Corp. (CIK No. 1083410) is a dissolved Florida corporation located in Madrid, Spain with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cigma Metals is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $10,422,276 from the company's January 13, 1989 inception through September 30, 2012. As of May 28, 2015, the company's stock (symbol "CGMX") was quoted on OTC Link, had twelve market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. LL&E Royalty Trust (CIK No. 721765) is a Michigan trust located in Troy, Michigan with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LL&E Royalty Trust is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2011, which reported a net loss of $1,995,390 for the prior nine months. As of May 28, 2015, the company's units of interest (symbol "LRTR") were quoted on OTC Link, had ten market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Dissented as to Investment
Advisers Act Charges.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9801 / June 3, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4102 / June 3, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31659 / June 3, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16573

In the Matter of

Michael G. Thomas,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, 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 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Michael G. Thomas ("Thomas" or "Respondent").

II.

In anticipation of the institution of these proceedings, Thomas 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, Thomas 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 203(f) and 203(k) of the Investment Advisers Act of 1940, 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 that

SUMMARY

1. These proceedings arise out of the materially false and misleading representations that Thomas made in general solicitations to the public concerning a pooled investment vehicle, Michael G. Investments, LLC ("MGI"). Thomas made material misrepresentations to prospective investors concerning his own past investment performance, the personnel who would manage and advise MGI, and MGI's projected performance. In addition, Thomas falsely claimed to have received a prominent industry honor. Thomas made the misrepresentations in marketing materials that he distributed to potential investors through email and to the general public through the internet. Thomas did not succeed in selling any MGI securities. By virtue of his misrepresentations to prospective investors, Thomas willfully violated Sections 17(a)(1) and (3) of the Securities Act, as well as Section 206(4) of the Advisers Act, and Rule 206(4)-8 promulgated thereunder.

RESPONDENT

2. Michael G. Thomas ("Thomas"), age 30, resides in Oil City, Pennsylvania. He is the founder, manager, and sole member of MGI, which Thomas formed to be a pooled investment vehicle. He also served as MGI's sole adviser and held discretion to invest MGI's assets. Commencing in May 2014, Thomas provided investment advisory services to MGI and attempted to raise capital on MGI's behalf.

OTHER RELEVANT ENTITY

3. Michael G. Investments, LLC ("MGI") is a Wyoming limited liability company formed by Thomas in 2014, with its principal place of business in Oil City, Pennsylvania. Thomas formed MGI to invest in a variety of securities, including equity and fixed income securities.

FACTS

4. In May 2014 and June 2014, Thomas engaged in general solicitations of the public in order to find investors for MGI, a pooled investment vehicle. Thomas projected that MGI would earn a 49.81% five-year return for investors through MGI's investments in start-up companies, expansion-stage companies, growth companies, and real estate.

5. Thomas succeeded in reaching a large number of prospective investors through e-mails and the internet. For instance, during May and June 2014, Thomas sent email blasts to approximately 37,000 email addresses offering to sell MGI securities to prospective investors. Thomas obtained the email addresses from a service that purported to sell accredited investor email lists. The emails Thomas sent contained links to MGI's Summary Prospectus, Private Placement Memorandum, Subscription Agreement, and Investor Questionnaire (collectively, the "MGI Marketing Materials"). In addition, Thomas created a website on which he posted the MGI Marketing Materials in order to solicit additional prospective investors. Thomas also sent copies of the MGI Marketing Materials to approximately ten prospective investors who had responded to his previous solicitations.

6. Thomas authored and distributed the MGI Marketing Materials, which contained a number of materially false and misleading representations. For example, in the Summary Prospectus, Thomas falsely represented that his personal investment portfolio had gained an average of 40% per year since 2008. In reality, Thomas knew that he had lost money on his investments since 2008, and had negative returns during that same time period.

7. Thomas made additional representations in the Private Placement Memorandum, stating that he had turned $600 into $6 million through one of his investments when, in fact, Thomas had invested substantially more than $600 into this enterprise and received a negative return on the investment. Indeed, Thomas knew that the referenced enterprise was insolvent prior to the time that he drafted and distributed the Private Placement Memorandum.

8. In the Private Placement Memorandum, Thomas also falsely represented that a financial services professional and a business lawyer served on MGI's management team. While Thomas was acquainted with these individuals, these persons had no connection to MGI and were not even aware that Thomas had included them in the MGI Marketing Materials.

9. Thomas made additional misrepresentations in the MGI Marketing Materials concerning the safety of MGI's prospective investments. Thomas discussed the ten companies in which MGI was to invest and described the projected returns for MGI as "conservative" and "reasonable." However, Thomas did virtually no diligence with respect to the companies and knew that many, if not all, of the MGI investments contained significant risk, including a high likelihood of default. Despite recognizing the risk inherent in such investments, Thomas never made an allowance for losses and defaults in the projections included in the MGI Marketing

Materials. Moreover, he failed to warn investors that he had no contracts, letters of intent, or other agreements relating to the ten companies.

10. Thomas also falsely told prospective investors that he had received a number of honors. For example, Thomas represented that he was named a Top 25 Rising Business Star by *Fortune Magazine*. Thomas never received such an honor, and it does not exist.

11. The MGI offering did not result in the sale of any MGI securities.

VIOLATIONS

12. As a result of the conduct described above, Thomas willfully violated Sections 17(a)(1) and (3) of the Securities Act, which prohibit fraudulent conduct in the offer or sale of securities.

13. As a result of the conduct described above, Thomas willfully violated Section 206(4) of the Advisers Act, and Rule 206(4)-8 promulgated thereunder, which prohibit making an untrue statement of a material fact or omitting any material fact to any investor or prospective investor in a pooled investment vehicle and engaging in any act, practice, or course of business that is fraudulent or deceptive with respect to any investor or prospective investor in a pooled investment vehicle.

UNDERTAKING

Thomas has undertaken to:

For a period of five (5) years from the date of this Order, Thomas shall not participate, directly or indirectly, including, but not limited to, through any entity owned or controlled by Thomas, in the issuance, offer, or sale of any security; provided, however, that such undertaking shall not prevent Thomas from selling securities listed on a national securities exchange for his own personal account.

In determining whether to accept the Offer, the Commission has considered this undertaking.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Thomas cease and desist from committing or causing any violations and any future violations of Sections 17(a)(1) and (3) of the Securities Act, and Section 206(4) of the Advisers Act, and Rule 206(4)-8 promulgated thereunder.

B. Thomas 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; and
>
> 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;

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Thomas 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against Thomas, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) 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. Thomas shall pay civil money penalties of $25,000 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). Thomas shall pay the penalty due of $25,000 in two (2) installments to the Commission according to the following schedule: (1) $12,500 within 180 days of entry of this Order; and (2) the balance due of $12,500 plus accrued interest within 365 days of entry of this Order. 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 on any unpaid amounts due 21 days after service of the Order. Prior to making the final payment set forth herein, Thomas shall contact the staff of the Commission for the amount due for the final payment. If Thomas 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. Payment must be made in one of the following ways:

(1) Thomas 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

(2) Thomas 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 Michael G. Thomas 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 Julie M. Riewe, co-Chief, Asset Management Unit, Securities and Exchange Commission, 100 F Street, NE, Washington, DC, 20549, and John J. Graubard, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

E. Thomas shall comply with the undertaking enumerated in the Undertaking section, above.

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 Thomas, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Thomas 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 Thomas 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.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher Dissented as to Investment Advisers Act Charges.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9800 / June 3, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75099 / June 3, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4101 / June 3, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31658 / June 3, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16572

In the Matter of	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER
TODD M. SCHOENBERGER,	
Respondent.	

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"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Todd M. Schoenberger ("Schoenberger" 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 Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, 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 that:

<u>Summary</u>

1. Between January 2013 and July 2013, Schoenberger used misrepresentations and omissions of material fact to solicit at least a dozen investors to invest money in short-term promissory notes issued by LandColt Capital LP ("LandColt"), an unregistered investment adviser controlled by Schoenberger. Schoenberger told prospective investors that the proceeds of the promissory notes ("LandColt notes") would be used for LandColt's working capital, and further claimed that LandColt would repay the LandColt notes from management fees that LandColt would earn from managing a private fund that Schoenberger would shortly launch and call the LandColt Onshore Fund, LP ("Onshore Fund" or "Fund"). Schoenberger further told investors that a prominent investment bank (hereafter, "Investment Bank A"), as well as other accredited investors, had made firm commitments to invest as much as $65 million in the Onshore Fund and that, as a result, LandColt's management fees would be substantial.

2. Based on Schoenberger's claims, four individuals invested a total of $130,000 in four LandColt notes that provided between 3% and 20% simple interest. Two of the LandColt notes also gave investors 0.5% of the management fee that LandColt expected to earn from managing the Onshore Fund.

3. Schoenberger's claims were false. There were never firm commitments by an investment bank or any accredited investors to invest in the Onshore Fund. Moreover, Schoenberger diverted more than half of investor funds he received—at least $67,000—for his own personal use, including for use as a down payment on the construction of a new home and to pay living expenses. The Onshore Fund never launched and no investor received the returns promised by Schoenberger.

Respondent

4. Schoenberger owned LandColt through ownership of LandColt's only partner, LandColt Capital GP, LLC. He is 43 years old and a resident of Lewes, Delaware. Since at least 2010, Schoenberger has been a frequent investment and stock market guest commentator on national cable television business news programs. He also served as an occasional business news columnist for a national newspaper and national news website. In soliciting investors, Schoenberger touted his appearances on cable news programs to bolster his credibility with investors, create around himself an aura of success, and entice investments in his scheme.

Other Relevant Entities

5. LandColt is a Delaware limited partnership based in Lewes, Delaware. Created by Schoenberger in February 2013, it never had any operations and its only assets were the investor funds obtained by the fraud. LandColt was cancelled as a Delaware entity in March 2015.

6. The Onshore Fund is also a Delaware limited partnership created by Schoenberger in February 2013. It never had never had any assets or operations and was cancelled as a Delaware entity in March 2015.

Background

7. In late 2012, Schoenberger began efforts to form an unregistered private fund. At the time, he was doing business development work for a third party investment adviser (hereafter, "Adviser A") by appearing as a market commentator on behalf of Adviser A on various cable television business shows. He was also allowing Adviser A to use for its clients investment signals generated by what Schoenberger viewed as his own proprietary investment strategy. This strategy combined a few technical indicators with Schoenberger's intuition in order to allocate investor assets across various mutual funds in three different commodity sectors (hereafter, "Schoenberger's strategy"). Schoenberger intended to use this same strategy as the basis for the private fund he was seeking to launch.

8. Schoenberger solicited prospective investors for his anticipated fund through contacts he had developed from his various media appearances. One of these contacts was a commodities broker (hereafter, "Broker"), associated with Investment Bank A. In October 2012, Schoenberger gave Broker a marketing pitch book for his proposed fund, which he indicated would be launched under Adviser A's name. The marketing pitch book gave information about Schoenberger's strategy, explained how it would be used for the proposed fund, and included charts of returns that were presented as actual returns of clients using Schoenberger's strategy. Schoenberger discussed with Broker using Investment Bank A as the fund's prime broker once the fund launched, if Investment Bank A introduced its clients to the fund.

Soliciting Investment Bank A

9. In November 2012, Schoenberger parted ways with Adviser A and decided that he would launch his new fund as the Onshore Fund. He also decided that he would create an adviser for the Onshore Fund, which he would call LandColt. He continued to solicit Broker for the opportunity to have the Onshore Fund offered to Investment Bank A's clients. He also solicited Broker for an investment by Investment Bank A itself in the Fund with its own proprietary money.

10. As part of efforts to solicit Investment Bank A, Schoenberger periodically emailed Broker with claims that his anticipated fund was close to launch and was obtaining commitments of capital for its launch. For instance, in a January 3, 2013 email to Broker, Schoenberger represented that the Onshore Fund would launch that quarter with at least $25 million in assets under management. Later, he sent a March 6, 2013 email to Broker, stating that LandColt had obtained $65 million in commitments on behalf of the Onshore Fund, which he said was now scheduled to launch on May 1, 2013. Schoenberger's emails to Broker typically included updates to what Schoenberger had originally represented were the actual returns of clients using Schoenberger's strategy.

11. In fact, Schoenberger had no commitments of any investments for the Onshore Fund and was unsure when the Onshore Fund would launch. The investment returns Schoenberger presented to Broker were hypothetical rather than actual. Schoenberger calculated the returns himself with a hand calculator, and based them on what a hypothetical client would have earned had he or she traded based on investment signals from Schoenberger's strategy. Once Schoenberger parted ways with Adviser A, he had no basis to claim that any actual investors were using signals from his strategy to earn the returns he claimed.

12. Investment Bank A never invested in the Onshore Fund and never made the Onshore Fund available to its clients.

LandColt Notes Offering

13. In December 2012, while Schoenberger was soliciting Broker, Schoenberger recruited an individual whom he also knew through a media contact to help him obtain start-up working capital for LandColt. Schoenberger told this individual (hereafter, "Finder") that LandColt would be the manager of the Onshore Fund once the Onshore Fund launched in 2013. To raise money for LandColt, Schoenberger asked Finder to help him find investors for a $5 million offering of equity interests in LandColt. Schoenberger initially described the offering as consisting of ten "equity interests" of $500,000 each. In exchange for purchasing an equity interest, an investor would receive 5% of the management fee that LandColt anticipated earning from the Onshore Fund for twenty-four months. After twenty-four months, the investor would receive a return of his or her full investment, but would continue to receive 2.5% of the management fee for the life of the Onshore Fund.

14. Schoenberger told Finder that Investment Bank A had made a firm commitment to invest $40 million in the Onshore Fund, and that various accredited investors had also made firm

commitments to invest an additional $25 million in the Fund. Schoenberger further told Finder he needed to raise capital to pay LandColt's start-up costs, as well as costs associated with launching the Onshore Fund. Schoenberger warned Finder that he risked losing the firm commitments if he did not launch the Fund soon.

15. Schoenberger provided Finder with marketing materials for the Onshore Fund, dated February 2013 (the "February 2013 materials"), as well as numerous links to his appearances on various cable television programs. The February 2013 materials included a representation that Schoenberger held a B.A. degree in economics from the University of Maryland, and noted that he had previously worked for a broker-dealer registered with the Commission ("Broker-Dealer."). In truth, neither Investment Bank A nor other investors had made commitments to invest in the Onshore Fund, and Schoenberger never obtained a degree from the University of Maryland. The February 2013 materials also did not disclose that Schoenberger had been terminated from the Broker-Dealer for misuse of company assets. Finder believed Schoenberger's claims about LandColt and the Onshore Fund because Schoenberger appeared credible and reputable within the investment community based on his appearances on cable television business shows.

16. Schoenberger promised to pay Finder 5% of LandColt's management fee for each $500,000 investment in LandColt until the investment was fully repaid. Thereafter, he promised Finder 2% of LandColt's management fee for the life of the Onshore Fund.

17. In early 2013, Finder began soliciting for LandColt investments among persons Finder knew. With Schoenberger's knowledge and approval, Finder repeated to prospective investors Schoenberger's claims that Schoenberger had obtained firm commitments of investments in the Onshore Fund. With Schoenberger's knowledge and approval, Finder touted the safety of investing in LandColt, telling prospective investors that LandColt was certain to earn enough in management fees to pay a return to investors, given the firm commitments of investments that Schoenberger had obtained for the Onshore Fund.

18. Finder also arranged for prospective investors to communicate directly with Schoenberger, who made his own misrepresentations about LandColt. During one call with a prospective investor, who later invested, Schoenberger falsely touted that an institutional investor had made a firm commitment to invest $40 million in the Onshore Fund and that other accredited investors had made additional firm commitments to invest $25 million in the Fund.

19. In an email with a different prospective investor, Schoenberger identified Investment Bank A as having made a commitment to invest in the Onshore Fund, and again claimed that other accredited investors had committed $25 million for the Fund. Schoenberger also falsely claimed that Investment Bank A had conducted a "very vigorous" background check on him, and was committed to investing in the Onshore Fund for a minimum of three years.

20. Schoenberger made additional misrepresentations to Finder and prospective investors. For instance, Schoenberger misrepresented to Finder that another investment bank (hereafter, "Investment Bank B") was strongly considering investing $40 million in the Onshore Fund, if LandColt could raise enough capital to hire a particular person as its chief operating

officer. Schoenberger also misrepresented to Finder that a private equity adviser (hereafter, "Adviser B") had made a commitment to invest $5 million in LandColt. In fact, Schoenberger knew that Adviser B had made no commitment to invest in LandColt, and that Investment Bank B was not considering a $40 million investment in the Fund. Schoenberger also distributed to prospective investors marketing materials for the Onshore Fund that were similar to the February 2013 materials he had given to Broker which falsely claimed Schoenberger had a degree from the University of Maryland and failed to disclose his termination for cause.

21. As the offering progressed, Schoenberger falsely told Finder that the terms of LandColt's offering had changed because LandColt did not need to raise as much money, in light of Adviser B's commitment. Schoenberger told Finder that the the offering was reduced from $5 million to $1 million and there was no longer a minimum investment amount.

The Investors

22. In March 2013, Schoenberger obtained investments in LandColt from three investors, Investor A, Investor B, and Investor C. In June 2013, he obtained an investment in LandColt from Investor D. Investor A, Investor C, and Investor D were introduced to LandColt directly by Finder. Investor B was introduced to LandColt by Investor A.

Investor A and Investor B

23. Investor A, 58 years old, is a manager at a textile mill. Investor B, 38 years old, works for the same textile mill. Schoenber falsely represented to Investor A directly or through Finder that LandColt had a number of investors ready to invest in the Onshore Fund, including Investment Bank A which had made a $40 million commitment to the Onshore Fund. Schoenberger also represented to Investor A that he had obtained a $5 million commitment to invest in LandColt from Adviser B. Investor A conveyed these falsehoods to Investor B without knowing they were misrepresentations. On March 27, 2013, Investor A and Investor B each invested $25,000 in LandColt notes, the proceeds of which were to be used for LandColt working capital. Each LandColt note promised 20% percent annual interest for a term of 45 days, and provided in perpetuity a payment of 0.5% of the management fee LandColt would earn from managing the Onshore Fund.

Investor C

24. Investor C, 75 years old, is a retired farmer. Schoenberger falsely represented to Investor C directly or through Finder that certain financial institutions were going to invest millions of dollars in the Onshore Fund, and that Adviser B had committed to invest in LandColt itself. On March 27, 2013, Investor C invested $65,000 in a LandColt note. Like the LandColt notes given to Investor A and Investor B, Investor C's note provided for 20% percent annual interest for a term of 45 days. Unlike the LandColt notes given to Investor A and Investor B, Investor C's LandColt note did not promise to pay Investor C a percentage of LandColt's management fee from the Onshore Fund.

Investor D

25. Between April 2013 and June 2013, Schoenberger continued offering LandColt notes. In April 2013, he met Investor D and solicited him to invest in LandColt. Schoenberger falsely told Investor D that he had commitments to the Onshore Fund of $65 million, including $40 million from Investment Bank A and $25 million from other investors. Schoenberger also falsely told Investor D that the Onshore Fund launched on May 1, 2013, and subsequently told him falsely that the Onshore Fund was operational and managing $65 million in assets. Based on these misrepresentations, on June 10, 2013, Investor D invested $15,000 in a LandColt note, which had a term of 90 days and provided 3% annual interest.

Misappropriation

26. Of the $130,000 Schoenberger received from the investors, Schoenberger misappropriated at least $67,000, which he used for, among other things, a down payment on the construction of a new home and to pay personal living expenses.

27. In February 2014, Investor D obtained a judgment against Schoenberger for the principal amount and interest due on his LandColt note. Schoenberger satisfied this judgment. In December 2014, Schoenberger reimbursed Investors A and B for the amounts each invested in LandColt notes. Schoenberger has not reimbursed Investor C for the amount he invested in a LandColt note.

Violations

28. As a result of the conduct described above, Respondent willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

29. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which make it unlawful for any investment adviser to a pooled vehicle to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle.

30. As a result of the conduct described above, Respondent willfully violated Sections 5(a) and 5(c) of the Securities Act, which prohibit, absent an exemption, any person, directly or indirectly, from making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell a security for which a registration statement is not in effect or to offer to sell a security for which a registration statement has not been filed.

31. Respondent has submitted a sworn Statement of Financial Condition, dated January 28, 2015, and other evidence and has asserted his inability to pay a civil penalty.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

B. Respondent 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;
>
> barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and
>
> 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.

C. Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) 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 shall, within 30 days of the entry of this Order, pay disgorgement, which represents profits gained as a result of the conduct described herein, of $65,000 and prejudgment interest of $4,349.87 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds to investor C or transfer funds to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. If Respondent reimburses Investor C for the investor's investment, and for the lost time value of money invested, the amount(s) of such reimbursement(s), as verified by the Commission staff, will dollar for dollar offset the amount payable to the Commission pursuant to this order. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 Todd M. Schoenberger 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 Stephen E. Donahue, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 950 East Paces Ferry Road N.E., Suite 900, Atlanta, GA 30326-1232.

E. Based upon Respondent's sworn representations in his Statement of Financial Condition, dated January 28, 2015, and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

F. 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 the maximum civil penalty allowable under the law. 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 a penalty should not be ordered;

(3) contest the imposition of the maximum penalty allowable under the law; 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.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Chair White
Not participating
Commissioner Stein
Disapproved

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9802 / June 3, 2015

In the Matter of **ARCHER DANIELS MIDLAND COMPANY**	**ORDER UNDER RULE 405 OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER FROM BEING AN INELIGIBLE ISSUER**

Archer Daniels Midland Company (the "Company") has submitted a letter, dated May 1, 2015, constituting an application for relief from the Company being considered an "ineligible issuer" under Clause (1)(v) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 ("Securities Act"). The Company requests relief from being considered an "ineligible issuer" under Rule 405, due to the entry by Alfred C. Toepfer International (Ukraine) Ltd. ("ACTI Ukraine") of a plea agreement with the United States Department of Justice on December 20, 2013 ("Plea Agreement"), in which ACTI Ukraine pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. § 78dd-3, in violation of 18 U.S.C. § 371.

Under Clause (1)(v) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of WKSI status, if "within the past three years, the issuer or any entity that at the time was a subsidiary of the issuer was convicted of any felony or misdemeanor described in paragraphs (i) through (iv) of Section 15(b)(4)(B) of the Securities Exchange Act of 1934." Under Paragraph 2 of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.

Based on the facts and representations in the Company's May 1, 2015 request, and assuming ACTI Ukraine complies with the terms of the Plea Agreement, the Commission has determined that the Company has made a showing of good cause that the Company will not be considered an ineligible issuer by reason of the entry of the Plea Agreement. Accordingly, the relief requested in the Waiver Letter regarding the Company being an ineligible issuer under Rule 405 by reason of the entry of the Plea Agreement is granted, on the condition that that ACTI Ukraine fully complies with the terms of the Plea Agreement. Any different facts from those represented or failure to comply with the terms of the Plea Agreement would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Accordingly, IT IS ORDERED, pursuant to Paragraph two of the definition of ineligible issuer in Rule 405 of the Securities Act, that a waiver from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9803 / June 3, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75103 / June 3, 2015

Admin. Proc. File No. 3-15211

In the Matter of FRANCIS V. LORENZO	ORDER DENYING LORENZO'S MOTION FOR RECONSIDERATION

On April 29, 2015, we issued an opinion and order finding that Francis V. Lorenzo violated Section 17(a)(1) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5 by sending false and misleading emails to prospective investors.[1] For these violations, we barred Lorenzo from the securities industry, ordered him to cease and desist from violating the antifraud provisions, and ordered him to pay a third-tier civil monetary penalty of $15,000. Lorenzo now seeks reconsideration of the imposition of the bar and $15,000 penalty. For the reasons below, we deny Lorenzo's request.

I.

This matter stems from emails that Lorenzo sent to two retail customers that contained false and misleading statements about a debenture offering by his client, Waste2Energy Holdings, Inc. ("W2E"). The emails promised customers that their investment would have three "layers of protection": (i) that W2E had more than $10 million "in confirmed assets"; (ii) that W2E had "purchase orders and [letters of intent] for over $43 mm in orders"; and (iii) that Lorenzo's employer, Charles Vista, LLC, had "agreed to raise additional monies to repay these Debenture holders (if necessary)." Lorenzo admitted at the hearing that he knew each of these statements was false and/or misleading when he sent them. Based on an independent review of the record, we found that his conduct violated the antifraud provisions of the federal securities laws and warranted imposition of an industry-wide bar, a cease-and-desist order, and a $15,000 civil penalty.

---

1 *Francis V. Lorenzo*, Securities Exchange Act Release No. 74836, 2015 WL 1927763 (Apr. 29, 2015).

II.

Reconsideration is an extraordinary remedy "designed to correct manifest errors of law or fact or permit the presentation of newly discovered evidence."[2] Applicants may not use motions for reconsideration to reiterate arguments previously made or to cite authority previously available.[3] Because of this, motions for reconsideration are granted only in exceptional cases. Lorenzo's motion fails to meet these requirements.

Lorenzo asks the Commission to reconsider its imposition of a bar and $15,000 civil penalty because those sanctions, he claims, are "a draconian penalty and an extreme departure from the one year suspension recently imposed on two other individuals by the Commission for very similar conduct in *In the Matter of John P. Flannery and James D. Hopkins*."[4] This argument reiterates an assertion Lorenzo made during oral argument and is one we expressly rejected when determining sanctions. Lorenzo's restated arguments therefore provide no basis for reconsideration. We nevertheless emphasize two points below.

First, Lorenzo significantly misstates the seriousness of his misconduct. We expressly found that Lorenzo acted egregiously. While Lorenzo may have sent "only" two misleading emails to prospective investors, Lorenzo demonstrated a complete disregard for his professional and ethical responsibilities "by grossly misleading, if not outright lying to, retail customers about the significant risks involved in purchasing W2E's debentures."[5] That Lorenzo "so blatantly ignored the importance of communicating truthfully with potential investors create[d] a significant risk that he will engage in similar misconduct in the future and demonstrates his unfitness to participate in the securities industry."[6] Such violations of the antifraud provisions, we have long held, are "'especially serious and subject to the severest of sanctions under the securities laws.'"[7]

---

2 *Steven Altman, Esq.*, Exchange Act Release No. 63665, 2011 WL 52087, at *1 (Jan. 6, 2011) (citations omitted).

3 *Daniel Imperato*, Exchange Act Release No. 74886, 2015 WL 2088435, at *1 (May 6, 2015) (citing *Altman*, 2011 WL 52087, at *1).

4 Citing *John P. Flannery*, Exchange Act Release No. 73840, 2014 WL 7145625 (Dec. 15, 2014), *appeal docketed*, No. 15-1080 (1st Cir. Jan. 16, 2015).

5 *Lorenzo*, 2015 WL 1927763, at *12.

6 *Id.* at *13 (finding also that Lorenzo "displayed troubling dishonesty" by sending "his two misleading emails separately, to different customers, thus presenting separate opportunities to mislead prospective investors").

7 *Id.* at *12 (quoting *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) (imposing a full collateral bar), *pet. for review denied*, 773 F.3d 89 (D.C. Cir. 2014)).

Second, Lorenzo oversimplifies our sanctions analysis. He argues, for instance, that "[s]everal of the factors that the Commission gave to support Lorenzo's permanent bar and civil penalty—such as a purported failure to accept responsibility for the conduct and the danger that the conduct could reoccur—were also cited by the Commission in the *Flannery* case as reasons why a one year suspension was imposed." But we did not base our sanctions determination on just Lorenzo's failure to accept responsibility or the danger of recurrence. We also based it on the circumstances surrounding those factors. For example, Lorenzo not only failed to accept responsibility, he also attempted to shift blame onto others. We were "particularly troubled" by Lorenzo's continued attempts to shift blame onto his employer for not disclosing certain information more fully—the same information that Lorenzo himself failed to disclose.[8] Lorenzo also admitted that the conduct at issue (sending emails to customers) was outside his normal professional duties—a fact that "heighten[ed] our concern that Lorenzo will engage in future misconduct if allowed to remain in the industry."[9]

For these reasons, it is ORDERED that Francis V. Lorenzo's motion for reconsideration be, and hereby is, denied.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

---

8 *Id.* at *13.

9 *Id.* at *14. The sanctions considerations discussed in this order are only some of the factors we considered and that are discussed more fully in our opinion. And we emphasize, as we did in our opinion, that "the 'appropriate sanction depends upon the facts and circumstances of each particular case and cannot be determined precisely by comparison with actions taken in other proceedings.'" *Id.* at *15 (quoting *Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 WL 5328765, at *17 n.68 (Dec. 19, 2008)).

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4103 / June 4, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31660 / June 4, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-15519

In the Matter of

TIMBERVEST, LLC, JOEL BARTH SHAPIRO, WALTER WILLIAM ANTHONY BODEN, III, DONALD DAVID ZELL, JR., and GORDON JONES II

ORDER CONCERNING ADDITIONAL SUBMISSION AND PROTECTIVE ORDER

On May 20, 2015, Respondents filed a Motion to Allow Submission of Additional Evidence and for Leave to Adduce Additional Evidence.[1] Asserting that additional evidence is needed to resolve their claim that the Commission's "administrative forum lacks impartiality," Respondents seek, among other things, to take the deposition of the administrative law judge who presided over the hearing and issued the Initial Decision here, ALJ Cameron Elliot. In support of their Motion, Respondents identify a recent newspaper article in which a former administrative law judge of the Commission alleges that during her tenure she experienced pressure from the Chief ALJ to rule in favor of the Division of Enforcement in pending cases.[2] Respondents recognize that the former ALJ "departed the Commission years before the hearing in this matter[.]"

1 Available at: www.sec.gov/litigation/apdocuments/3-15519-event-130.pdf

2 *See* Jean Eaglesham, *SEC Wins With In-House Judges*, THE WALL STREET JOURNAL (May 6, 2015) (referring to allegations by former ALJ that during her tenure at the Commission, the former ALJ came "under fire" for finding in favor of respondents, had her "loyalty" to the Commission "questioned" on account of her rulings, and was "expected to work on the assumption" that "the burden was on the [respondents] to show that they didn't do what the agency said they did").

We believe that our consideration of Respondents' Motion would be assisted by the submission of certain additional material for inclusion in the record.[3]

Accordingly, we are hereby inviting ALJ Elliot to file by July 1, 2015, an affidavit addressing whether he has had any communications or experienced any pressure similar to that alleged in the May 6, 2015 *The Wall Street Journal* article, "SEC Wins With In-House Judges," and whether he is aware of any specific instances in which any other Commission ALJ has had such communications or experienced such pressure. ALJ Elliot is also invited to include in his affidavit any other matter pertaining to allegations of bias or partiality that he may consider pertinent or wish to address.[4] We request that ALJ Elliot not consult with anyone at the Commission in the preparation of his affidavit concerning the substance thereof, and that he confirm in his affidavit that no such consultations or discussions occurred.

It is ORDERED that the Office of the Secretary shall promptly notify ALJ Elliot of this invitation by providing a copy of this document to him.

It is further ORDERED that, if ALJ Elliot submits the above-referenced affidavit, then:

1. The Office of the Secretary shall promptly serve copies of ALJ Elliot's affidavit on the parties;[5]

---

[3] We emphasize that this order is not to be construed as expressing the Commission's view as to the substance of the allegations identified in the newspaper article. Nor should this order be construed to express the Commission's views on the disposition of Respondents' Motion (including with respect to the materiality of the discovery sought therein), the Division's Opposition to the Motion, or the merits of Respondents' underlying claims. Respondents' Motion remains pending before the Commission.

[4] Although we believe that the information that ALJ Elliot could provide concerning these topics could significantly assist us, we emphasize that any submission by him would be voluntary on his part. Should ALJ Elliot determine not to submit an affidavit, we respectfully request that he notify the Commission's Secretary on or before July 1, 2015. The Secretary shall thereafter promptly notify the parties.

[5] The Commission is directing that the affidavit be maintained under seal in order to provide the affiant confidentiality. Accordingly, the Commission finds that, at the present juncture, the harm resulting from disclosure of the affidavit would outweigh the benefits of disclosure and that the issuance of a protective order accordingly is appropriate. *See* Rule of Practice 322, 17 C.F.R. § 201.322(a). The Commission reserves the authority to reach a different conclusion regarding confidentiality at any time before it finally determines the issues raised in this proceeding, and the terms of this protective order are subject to modification upon a showing of good cause.

2. The Office of the Secretary shall maintain the affidavit under seal and provide it only to the Commission and any staff of the Commission directly advising the Commission in its deliberative processes with respect to this proceeding or acting for the Commission in connection with any subsequent appeal;

3. Any person receiving access to ALJ Elliot's affidavit shall take reasonable steps to maintain its confidentiality and shall not divulge its contents to any other person; and

4. Two versions of any filing containing or referencing information subject to this order shall be prepared: (a) a complete version of the document marked "CONFIDENTIAL" for filing under seal under the terms of this protective order, and (b) a redacted version of the same document for the public file.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Chair White
Not participating
Commissioner Piwowar
Disapproved

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9804 / June 5, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75110 / June 5, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3662 / June 5, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16575

In the Matter of

COMPUTER SCIENCES CORPORATION, MICHAEL LAPHEN, MICHAEL MANCUSO, WAYNE BANKS, CLAUS ZILMER, AND PAUL WAKEFIELD

Respondents.

ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER ("ORDER")

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Claus Zilmer and pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Exchange Act against Computer Sciences Corporation ("CSC"), Michael Laphen, Michael Mancuso, Wayne Banks, and Paul Wakefield (collectively with Zilmer, "Respondents"); and that public administrative proceedings be, and hereby are, instituted against Laphen, Banks, and Wakefield pursuant to Exchange Act Section 4C and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") that 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, Respondents consent to the entry of this Order, as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1]:

SUMMARY

1. From 2009 to 2011, CSC engaged in a wide-ranging accounting and disclosure fraud that materially overstated its earnings and concealed from investors significant problems with its largest contract. Former CEO Michael Laphen approved CSC's use of improper accounting models for the company's multi-billion dollar contract with the United Kingdom's National Health Service ("NHS"). Laphen and former CFO Michael Mancuso also failed to make required disclosures and made misleading statements to investors about the NHS contract. And in one quarter, CSC's former Finance Director for the NHS account prepared a fraudulent accounting model in which he included made-up assumptions to avoid a negative hit to CSC's earnings. As this was occurring in the United States and the United Kingdom, senior CSC finance personnel in Australia fraudulently overstated the company's earnings using "cookie jar" reserves and by failing to record expenses as required. Separately, CSC finance personnel in Denmark engaged in a variety of fraudulent accounting manipulations that also overstated the company's earnings. Throughout this period, CSC's most senior executives and various finance personnel repeatedly failed to comply with straightforward accounting standards and disclosure rules.

2. CSC's[2] contract with the NHS was a significant source of concern for the company. It was the company's largest, and most high profile contract, and CSC experienced substantial difficulties performing as required, even after the contract was amended in 2009 to give CSC additional time to meet deadlines it had missed. CSC's failure to meet its deadlines would have significantly reduced the profit the company could make from the project. Under the

---

[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.

[2] The NHS awarded the contract to a CSC affiliate in the UK, CSC Computer Sciences Ltd., which performed the NHS contract. Throughout this document "CSC" may refer to CSC, the issuer, or its foreign subsidiaries or affiliates.

relevant accounting standards, every time CSC forecasted that it would earn a lower profit margin than it had previously expected, it was required to report a reduction in its earnings.

3. In September 2009, CSC finance personnel responsible for the NHS contract prepared an initial accounting model that reflected the NHS contract was no longer profitable. This was a significant change from prior models, which had forecast a 16% profit margin. In response, Robert Sutcliffe, the Finance Director on the NHS account, led a fraudulent "gap closing" exercise in which his team simply contrived assumptions about additional revenue CSC would earn on the contract. These assumptions had no basis in reality. The accounting model they prepared artificially restored the forecasted profit margin to its previous level, thereby avoiding the material reduction in operating income that GAAP required CSC to record.

4. With delays continuing, the NHS account team warned Laphen and Mancuso that CSC would need a "major contract reset" and would need to "re-cast" its accounting models in the future. In late 2009, Laphen and Mancuso were aware that CSC began using proposed contract amendments that CSC was negotiating with the NHS, and that Laphen and Mancuso hoped the UK government would agree to implement, as the basis for CSC's accounting models rather than the enforceable contract with the NHS. They did so even though the assumptions in the company's accounting models bore scant relation to the actual contract. Most significantly, notwithstanding CSC's delays and the UK government's criticism of CSC's performance, these accounting models assumed the UK government would agree to pay substantially higher prices than required by the contract for less work so that CSC could maintain its expected profit margin.

5. As CSC's delays continued and its profit margin under the enforceable contract declined, and with CSC and the NHS unable to reach agreement on potential amendments, the account team avoided recording material reductions in CSC's earnings by adjusting the models to assume the UK government would agree to pay progressively higher prices. CSC included these assumptions in its models for a two-year period despite the NHS's repeated rejections of CSC's proposed amendments, even though NHS personnel and UK government officials stated frequently they were unhappy with CSC's performance, and even after the Chair of the UK's Public Accounts Committee was quoted publicly as saying CSC's proposed contract amendments were "unspeakably unacceptable" and "[t]here is no way these guys ought to be working for the government." This was a clear violation of GAAP. CSC also failed to comply with GAAP by failing to impair the value of its contract assets when it ceased to be probable that the company would recover its investment in the program.

6. CSC also made misleading statements to investors and failed to make required disclosures regarding the NHS contract. On two occasions in 2009, Laphen told investors that CSC had met, and expected to continue meeting, its deadlines. These disclosures were misleading because they failed to inform investors that CSC was not achieving the milestones set

forth in the contract; that Laphen was referring to informally revised deadlines[3]; that CSC was engaged in an ongoing dispute with the NHS about which milestones applied; that CSC's deployment projections were falling far short of expectations; and that the NHS had sent letters asserting that CSC was in default and demanding that CSC pay penalties.

7. In violation of multiple disclosure requirements, Laphen and Mancuso repeatedly failed to inform investors of these issues. They also failed to disclose that CSC was calculating its profit margin for the NHS contract using its proposed contract amendments — instead of the binding contract between the parties — and that CSC would have to record a material decrease in its earnings unless the NHS and various other UK government bodies agreed to amend the contract to require them to pay CSC significantly higher prices.

8. In addition, CSC made misleading statements and failed to make required disclosures to investors about the relationship between the NHS contract and one of CSC's most important financial metrics, free cash flow.[4] The NHS had agreed to provide CSC cash advances to help offset the company's costs. Although GAAP allowed CSC to record these advances as operating cash flow, rather than financing cash flow, they were effectively loans. CSC effectively paid the NHS a 5% interest rate for the advances and refunded the portions of the advances that CSC was unable to earn in revenue. CSC's former Treasurer had recommended to Mancuso that CSC lower the amounts of the advances because the high costs of the arrangement resulted in an economic loss for CSC. However, Mancuso rejected this recommendation. He directed that the advances continue because they allowed CSC to meet its cash flow targets. The amounts of these advances as a percentage of CSC's free cash flow, and the amounts CSC returned to the NHS as its delays continued, increased substantially — peaking at 63% of CSC's free cash flow in Q4FY2011, with the company subsequently returning 93% of that advance when the NHS finally ended the arrangement in FY2012.

9. In violation of SEC disclosure rules, Mancuso repeatedly failed to disclose that these unusual advances from the NHS comprised significant proportions of its free cash flow results. Moreover, on two occasions, Mancuso made misleading statements to investors about the advances. During CSC's year-end earnings calls for FY2009, a financial analyst asked Mancuso whether CSC had received "any large prepayments" from NHS or other clients during the fourth quarter of FY2009. Even though he knew that CSC had indeed received a large prepayment from the NHS in that period, Mancuso replied that the company had not. And during CSC's year-end earnings call for FY2010, Mancuso led investors to believe CSC had not received a large advance from the NHS, telling investors that CSC had achieved its free cash flow results "the old fashioned hard way." Mancuso attributed CSC's cash flow results, which he

---

3 The NHS agreed to a new set of deadlines it identified as "highest priorities (and bare minimum[s])" but noted that these were not "in any way a waiver of CSC's obligations to deliver its contracted requirements."

4 Although free cash flow is a non-GAAP metric, many CSC analysts consider it to be an important performance metric because it reflects how much cash the company is generating.

described as "a glowing achievement" and "not unnatural," to improvements in working capital and receivables.

10. In addition to the accounting and disclosure violations involving the NHS contract, two of CSC's international businesses ignored basic accounting standards to increase their reported profits. In Australia, CSC's two most senior finance executives in the country, regional CFO Wayne Banks and Controller Edward Parker, fraudulently manipulated the company's earnings through excess accruals they maintained in "cookie jar" reserves and by failing to record expenses as required. This fraud alone overstated CSC's consolidated pretax income by over 5% in Q1FY2009, and allowed CSC to meet analysts' earnings targets in that period.

11. And during FY2010, CSC's Nordic region engaged in a variety of accounting manipulations to fraudulently inflate its operating results. These included improperly accounting for client disputes, overstating assets, and capitalizing expenses. The fraudulent conduct involved Finance Director of the Nordic region Paul Wakefield and other employees in Denmark. CSC's Nordic region engaged in this misconduct to improve operating income in a region that was struggling to achieve budgets set by CSC management in the U.S. During FY2010, the accounting fraud in Denmark overstated CSC's consolidated pre-tax income by 5% in Q1FY2010, 3% in Q2FY2010, 4% in Q3FY2010, and 7% in Q4FY2010.

RESPONDENTS

12. Computer Sciences Corporation sells information technology services. It is a Nevada corporation headquartered in Falls Church, VA. CSC's common stock is currently registered with the Commission pursuant to Exchange Act Section 12(b) and trades on the New York Stock Exchange.

13. Michael Laphen, 64, was CEO and Chairman of CSC from 2007 until his retirement in March 2012, after 35 years with the company. Laphen holds a bachelor's degree in Accounting from Pennsylvania State University and an MBA from the University of Pennsylvania. Laphen was licensed as a certified public accountant in Pennsylvania from 1975 to 1990, when his license became inactive.

14. Michael Mancuso, 72, was CFO of CSC from December 2008 until his retirement in May 2012. Previously, Mancuso was the CFO of General Dynamics Corp. Mancuso holds a bachelor's degree in Business Administration from Villanova University and an MBA from Eastern College.

15. Wayne Banks, 47, a citizen and resident of Australia, was CSC Australia's CFO from 2006 until he resigned in July 2011. Banks has a bachelor's degree in Business and is a Chartered Accountant in Australia.

16. Paul Wakefield, 42, a citizen and resident of the UK, was the Finance Director of the Nordic region from April 2008 to April 2010. Wakefield resigned from CSC in April 2010.

Wakefield is an associate of the Chartered Institute of Management Accountants in the UK. Wakefield entered into a cooperation agreement with the Division of Enforcement pursuant to which he has agreed to cooperate fully in the SEC's investigation; in any related enforcement litigation or proceedings to which the SEC is a party; and, when directed by SEC Enforcement Division staff, in an official investigation or proceeding by any federal, state, or self-regulatory organization.

17. Claus Zilmer, 48, a citizen and resident of Denmark, was a Finance Manager for CSC's Nordic region from April 2008 until June 2010. Zilmer left CSC in September 2010. Zilmer holds a degree in Economics and Business Administration from Odense University, now known as the University of Southern Denmark.

OTHER RELEVANT PERSONS

18. Robert Sutcliffe, 51, a citizen and resident of the UK, was CSC's Finance Director for the NHS account from April 2004 until May 2012. CSC suspended Sutcliffe in May 2012 and terminated his employment in 2013. Sutcliffe studied accounting and business finance at Manchester University. He is a fellow of the Chartered Institute of Management Accountants (CIMA) in the UK. The Commission has charged Sutcliffe for his role in the misconduct described in its Order.

19. Edward Parker, 42, a citizen and resident of Australia, was CSC Australia's financial controller from 2007 until the company suspended him in August 2011. He left the company in October 2012. Parker has been a licensed Chartered Accountant in Australia since 1994. The Commission has charged Parker for his role in the misconduct described in its Order.

20. Chris Edwards, 32, a citizen and resident of the UK, was the Finance Manager of the Nordic region Global Outsourcing Services Pools from December 2008 to June 2010. Edwards left CSC in October 2010. Edwards is a Chartered Accountant in the UK. The Commission has charged Edwards for his role in the misconduct described in its Order.

FACTS

Background of CSC's Contract with the NHS

21. Having launched a plan in 2003 to electronically integrate patient medical records across the United Kingdom, the NHS awarded long-term contracts to CSC Computer Sciences, Ltd and three other IT contractors to build and deploy an electronic patient records system by 2013. The project experienced technical problems and delays almost from the start. As other contractors abandoned the project, the NHS encouraged and approved of CSC expanding its role. By 2007, CSC had assumed responsibility for the project throughout most of the UK.

22. CSC had the potential to earn $5.4 billion in revenue if it were able to satisfy the terms of the NHS contract. CSC earned revenue under the contract only to the extent that it

delivered products and services to the NHS under the timeframes and volumes set forth in the contract's deployment plan. To incentivize CSC to meet the contract's deployment targets, the contract penalized CSC up to $160,000 per day for missed deadlines.[5]

23. CSC experienced substantial difficulty developing the software required to run the patient medical records system. Because of its delays in performing as required under the contract, and the UK government's expansion of CSC's role in the project, CSC sought contract amendments in 2008 to reset the deployment plan and to waive the penalties CSC was required to pay. According to the UK Department of Health's Director General for Informatics at the time, the NHS agreed to these amendments primarily to gain what it believed to be certainty on deployment dates. In March 2008, the NHS entered into a binding Memorandum of Understanding with CSC that reset the deadlines.

24. The NHS did not, however, have the authority to amend the contract without authorization from various levels of the UK government. In addition to the NHS, the UK's Department of Health, Treasury, and Cabinet Office all had to approve the amendments. After obtaining these authorizations, CSC and the NHS entered into an amended contract, which the parties called "SARPA," in April 2009.

CSC Fails to Disclose Its Need to Renegotiate the NHS Contract and Paints a Misleadingly Optimistic View of the Company's Performance

25. As CSC awaited authorization from the various levels of the UK government to enter into SARPA, the parties experienced difficulty in performing as required. During this period, CSC management, including former CEO Laphen, was aware that CSC would not be able to meet its obligations in SARPA's deployment plan.

26. Because of how the parties structured the contract, CSC's inability to comply with SARPA created a significant risk to the company. According to a former CSC executive, it was "self-evident" to anyone familiar with the contract that if CSC failed to successfully renegotiate SARPA there was "a lot of revenue that would be reduced from this contract that would flow straight to [CSC]'s bottom line…."[6] Though CSC's management knew the company could not

---

5 Currency amounts are stated in U.S. dollars throughout this Order. Any necessary conversions from British pounds to U.S. dollars reflect a dollar-to-pound ratio of 1.6 to 1.

6 CSC earned two types of revenue under the contract: deployment revenue and service revenue. CSC earned deployment revenue when it deployed the software products to the NHS. CSC then earned service revenue by running and maintaining those products until the contract expired. Because the contract had a fixed term, product delays could cause CSC to run out of time in which to complete all of the deployments contemplated in the contract, triggering a loss in potential deployment revenue. Further, product delays compressed CSC's run-and-maintain period, leading to a loss in potential service revenue. Finally, product delays (and the bad press associated with them) could lead to reduced demand for CSC's products among NHS constituents, triggering further losses in potential deployment and service revenue. Such a loss in revenue created a significant risk to CSC's expected profit margin on the contract. Absent cost savings sufficient to offset the lost revenue, which were uncertain given that the

meet its commitments under the new contract, and believed the NHS would not be able to meet its commitments, CSC signed SARPA in April 2009.

27. Given that CSC's management did not believe the company would be able to satisfy the requirements of the amended contract, SEC disclosure rules and GAAP required CSC to disclose in its public filings that it would likely experience material adverse financial consequences if the UK government declined to amend the contract another time.[7] However, the only substantive disclosures CSC made in its Form 10-K for FY2009, which the company filed on May 29, 2009, and which Laphen and Mancuso signed, were that the NHS contract was profitable and that CSC expected to recover the amounts it had invested in the contract, which were then over $1 billion.

28. One week after filing its FY2009 Form 10-K, CSC missed the first of many key deployment milestones mandated in SARPA. Several days later, the NHS sent CSC an "event of default" letter. Over the next two and a half years, CSC and the NHS would exchange hundreds of dispute letters as they tried and repeatedly failed to agree on terms amid continuing deployment delays and an increasingly politically charged atmosphere.

29. By mid-July 2009, Laphen was personally aware of the dispute with NHS over the missed milestone. The President of CSC International informed Laphen that CSC had a "serious disconnect" with the NHS regarding the missed milestone. Laphen subsequently received numerous updates concerning the unresolved milestone dispute with the NHS. In late July 2009, account executives told Laphen that deployments were "not happening at the rate anticipated in the budget," and that negotiations with NHS were "required in a number of areas," including with regard to late penalties, product volumes, and deployment timeframes.

30. During CSC's earnings call for Q1FY2010 one week later, however, Laphen painted a misleadingly optimistic picture of the NHS contract. Though none of the issues discussed above had been resolved, Laphen reported to investors that CSC had "completed the activities scheduled within the quarter" and was "on pace to achieve [its] next key milestone." Laphen knew or should have known these disclosures were misleading because they failed to inform investors that CSC was not achieving the milestones set forth in the contract; that it had received numerous "event of default" letters from the NHS; that it was engaged in an ongoing

---

substantial majority of CSC's costs on the contract were to develop and deploy the software, CSC's expected profits would decline.

7 These disclosures were mandated by Regulation S-K Items 301, 303(a), and 303(b); FASB Accounting Standards Codification Topic 275 (*Risks and Uncertainties*); and AICPA Statement of Position 81-1 (*Accounting for Performance of Construction-Type and Certain Production-Type Contracts*) ("SOP 81-1"), Paragraph .84, *referencing* SFAS 154 (*Accounting for Changes and Error Corrections)*, Paragraph 22. For all financial statement periods ending prior to September 15, 2009, SOP 81-1 was the authoritative accounting literature. Subsequently, the applicable guidance became ASC 605-35 (*Construction-Type and Production-Type Contracts*). FASB codification of this issue did not materially change the relevant accounting standards.

dispute with the NHS about which milestones applied; that its deployment projections were falling far short of expectations; and that CSC required the NHS and various other UK government bodies to agree to contract amendments for the company to avoid a reduction in its earnings.

CSC's Use of Improper Accounting Models and Further Disclosure Violations Relating to the NHS Contract

A. Background of CSC's Use of Percentage of Completion Accounting

31. From the start of the project in 2003, CSC reported its financial results for the NHS contract using the percentage of completion ("POC") method of accounting.[8] So long as a company's estimates are reasonably dependable, POC accounting allows the company to derive a profit margin on a contract based on its estimates of total costs and revenues over the life of a long-term contract. GAAP requires companies using POC accounting to revise their estimates of expected costs and revenues continually as the work progresses.[9] These estimates are prepared in the form of accounting models. CSC's practice was to update its accounting models for the NHS contract in March and September of each year.

32. Under POC accounting, if a company's accounting model reflects that its profit margin on a contract will be different than previously forecasted, it must make an "inception-to-date" adjustment in the current period to reflect the change in the estimated amount of total gross profit earned to date.[10] And if a company's accounting model reflects that a contract will result in a loss to the company, GAAP requires the company to record the entire anticipated loss on the contract in the current period.

33. Further, companies often invest heavily on long-term projects before earning significant revenue. Under the POC accounting standards, a contractor typically records this spending as a "work-in-process" ("WIP") asset on its balance sheet. Then, as milestones are achieved and the contractor earns revenue, the contractor releases WIP to the income statement in proportion to the revenue earned during the current period.[11] If a contract becomes unprofitable

---

8 *See generally* ASC 605-35.

9 *Id.* at Paragraph .27.

10 For example, assume a company has previously recorded $10,000,000 in operating income using a 10% profit margin. If the company's accounting models reflect the margin is likely to be only 9%, the company must include a negative $1,000,000 offset in current period operating income to adjust for the impact of the lower margin on prior periods.

11 For example, assume a contractor has a $10,000,000 WIP balance and is estimating a 10% profit margin on the contract. If the contractor achieves a revenue milestone valued at $1,000,000, it records revenue of $1,000,000 and costs of $900,000 in its income statement, resulting in a remaining WIP balance of $9,100,000.

(due to cost overruns, inability to achieve revenue milestones, etc.), the WIP asset may be rendered wholly or partially unrecoverable, triggering a write-down in the value of the asset.

B. CSC's Fraudulent September 2009 Accounting Model

34. In June 2009, CSC's UK account team for the NHS contract held a two-day meeting to discuss the status of the contract. Based on revised deployment estimates, Robert Sutcliffe, the Finance Director for the NHS account, reported to his colleagues (but not to Laphen or Mancuso) that CSC would fall over $1 billion short of the original $5.4 billion revenue target for the contract. He reported further that the account had "no basis" for holding its operating income and revenue forecasts, and its accounting model was "non-sustainable." Similarly, one of the operational leads on the account reported that deployment volumes for that fiscal year were "much lower than anticipated," and that there was "real concern about our ability to complete the contract."

35. In September 2009, Sutcliffe and his team updated the accounting model for the NHS contract, using current deployment estimates. This was CSC's first updated model since executing SARPA. Whereas pre-SARPA models had forecasted CSC would earn a 16% profit margin on the NHS contract, the initial September 2009 calculation showed the contract would generate a significant loss.

36. Sutcliffe then led a fraudulent "gap closing" exercise to drive the profit margin back to its previous level. He and personnel working at his direction inserted into the accounting model hundreds of millions of dollars of revenue associated with products CSC had stopped developing and that the NHS had indicated it no longer intended to purchase. When these steps failed to fully restore the profit margin to 16%, Sutcliffe closed the remaining gap by assuming in the model that the NHS would agree to future price increases sufficient to maintain CSC's profit margin. This was a clear violation of GAAP, as there was no factual support of any kind for the assumed price increases. They were simply an artificial means of restoring the profit margin to the target level.

37. As a result of the fraudulent "gap closing" exercise, CSC continued to record a 16% profit margin on the NHS contract when it reported its financial results for Q2FY2010, thereby avoiding a material adverse charge to its operating income.[12]

C. Laphen's Statements During CSC's November 2009 Investors Conference

[12] This fraud also affected CSC's financial results in subsequent periods. As discussed below, in Q3FY2010, CSC began to base its accounting model on CSC's proposed contract amendments, which were designed to maintain a 16% profit margin. CSC's independent auditors endorsed the new accounting model on the belief that it did not result in any change in the existing margin. Had Sutcliffe not engaged in the fraudulent gap closing exercise, neither CSC nor its auditors could have employed that rationale to maintain the 16% profit margin.

38. In early November 2009, the President of CSC International warned Laphen about the team's unsatisfactory progress on an important contract milestone. Laphen also knew at that point about the ongoing milestone dispute with the NHS and the broader contractual risks.

39. Two weeks later, however, when CSC held an investor's conference on November 18, 2009, Laphen again painted a misleadingly optimistic picture of the NHS contract, telling investors, "there was skepticism around our NHS contract and CSC's ability to succeed where other prominent companies had failed. We went on to accomplish the key development milestones last year, and we are on track again this year." As with the Q1FY2009 earnings call, Laphen knew or should have known these disclosures were misleading because they failed to inform investors that CSC was not achieving the milestones set forth in the contract; that it had received numerous "event of default" letters from the NHS; that it was engaged in an ongoing dispute with the NHS about which milestones applied; that its deployment projections were falling far short of expectations; and that additional negotiations with the NHS were required.

D. CSC's Improper Change in Accounting Model for the NHS Contract

40. In November 2009, CSC entered into negotiations with the NHS to potentially amend SARPA. CSC offered to reduce the total price the NHS would pay by about 10% in exchange for reducing the scope and volume of the products and services CSC was required to provide by approximately 30%. This lopsided proposal was driven by Laphen's instruction that any offers CSC made to the NHS had to preserve CSC's 16% profit margin. For this to happen, any reductions in deployment volume had to be offset by price increases on the remaining volumes. Put simply, to preserve its profit margin, CSC had to persuade the NHS and the UK government to agree to pay more for less.[13]

41. The NHS rejected CSC's offer. Though it expressed a willingness to engage in further discussions over potential contract amendments, the NHS cautioned that CSC "should not assume that there is any agreement at this stage to any element of scope or volume reduction...." The parties then entered into negotiations that would continue intermittently for the next two years. Throughout this period, CSC continued to work on the project and the NHS continued to pay CSC for work according to negotiated amended deployment dates. However, the NHS repeatedly advised CSC both orally and in writing that SARPA (which CSC recognized was enforceable) remained the operative contract, and that CSC should not assume the parties would ever agree on revised terms.

42. Nonetheless, in December 2009, CSC implemented a significant change to its accounting model for the NHS contract. It began to base the model on contract amendments CSC had proposed rather than the existing terms of the contract. In doing so, CSC incorporated in its

[13] CSC's internal models reflected an assumption that deployment unit prices would roughly double, and service unit prices would increase as much as fivefold.

models significantly higher prices than what the parties had agreed to in SARPA and were currently using. This resulted in CSC continuing to recognize a 16% profit margin on the contract despite ongoing deployment delays and lower projected deployments. On multiple occasions during the relevant period, Laphen and Mancuso received information indicating that CSC's use of the new accounting model was allowing the company to achieve materially better financial results in comparison to the previous, SARPA-based model

43. The accounting standards provide expressly that a contractor may not recognize profit based on unapproved changes to a contract's price and scope.[14] Laphen knew or should have known that CSC's shift to an accounting model based on its offering terms (rather than SARPA) violated GAAP. As a result of the improper accounting models used on the NHS contract, CSC materially overstated its financial results during the period Q3FY2010 to Q2FY2012.

44. In violation of various disclosure rules, CSC, Laphen, and Mancuso failed to inform investors that CSC was basing its accounting models on its proposed contract amendments, rather than the terms of the enforceable contract, and that without the contract amendments, CSC's operating income would fall significantly.[15] This risk was heightened by the need for various levels of the UK government to approve the contract amendments CSC was seeking. Laphen, who characterized the NHS contract as a "political football," understood that the political environment in the UK posed an additional obstacle to securing the contract amendments CSC was seeking. In May 2010, a conservative party that had been highly critical of the NHS's IT program was elected. A month before the election, Laphen wrote to CSC's Board of Directors that the NHS "is under tremendous political pressure as the [Conservative] party highlights the program.... We run a risk that the upcoming election ... and a potential change in government could complicate [the negotiations]."

E. <u>CSC's Improper Accounting and Disclosures in Q3FY2011</u>

45. After fifteen months of intermittent negotiations — during which the NHS consistently refused to agree to terms that would allow CSC to maintain its 16% profit margin — Laphen finally ended his insistence that all offers to the NHS maintain that level of profitability.

---

[14] For accounting purposes, CSC treated its proposals as "change orders." However, the accounting standards provide that "[i]f change orders are in dispute or are *unapproved in regard to both scope and price*, they should be evaluated as claims." *See* SOP 81-1 at Paragraph .63 (emphasis added). CSC's proposals were unapproved as to both scope and price, and therefore should have been evaluated as "claims." CSC never evaluated its proposals as such. Those proposals could not have met the strict requirements of "claim" accounting (*see* SOP 81-1, at Paragraphs .65-.67). Further, even if CSC's proposals had met those requirements, the accounting standards prohibit a contractor from recording any profit on a claim. *See* SOP 81-1 at Paragraph .65 ("If the foregoing requirements [for claim accounting] are met, revenue from a claim should be recorded only to the extent that contract costs relating to the claim have been incurred [*i.e.*, no profit]."). Indeed, as stated in CSC's own POC accounting training materials, it is "never appropriate to recognize [profit] margin on a claim."

[15] These disclosures were mandated by Regulation S-K Items 301, 303(a), and 303(b); ASC 275; and SOP 81-1, Paragraph .84.

On February 7 or 8, 2011, Laphen approved a new offer to the NHS which would have resulted in CSC earning only a 12.7% profit margin. CSC submitted this proposal to the NHS on February 9, 2011.

46. Later that day, CSC filed its Form 10-Q for Q3FY2011. As discussed above, CSC's use of the proposed contract amendments as the basis for its accounting models violated GAAP. Had CSC continued to follow its improper approach of basing its accounting models on the most recent offer it had made to the NHS, the company would have recorded a $52 million negative adjustment to operating income in Q3FY2011.[16]

47. But CSC did not do so. Rather than preparing a new accounting model at that time reflecting its most recent offer (that, if accepted, would have resulted in a 12.7% profit), CSC instead prepared its financial statements for Q3FY2011 using the *prior* accounting model that had forecasted CSC would continue to earn a 16% profit.

48. CSC failed to inform investors that it was basing its accounting models on offering terms rather than the enforceable contract. CSC further failed to inform investors that it was basing its financial statements on an offer that had not only been rejected by the NHS, but that had been superseded by a revised offer that would generate a significantly lower profit margin to the company and would require a large inception-to-date adjustment that would reduce CSC's earnings.

49. In addition to its improper accounting and its failure to make required disclosures, CSC affirmatively misled investors about the contract. CSC stated in its Form 10-Q for Q3FY2011 that "[t]otal contract value, based on proposals submitted to the NHS, is currently estimated to be reduced between $800 and $950 million." In fact, the revised offer CSC had submitted to the NHS proposed an approximately $1.2 billion reduction in total contract value.

50. CSC also held its Q3FY2011 earnings call on February 9, 2011. During the question-and-answer portion of the call, an analyst asked Laphen whether "there will be some kind of a write-down or some kind of cost and hit to the P&L" in connection with the contract amendments CSC was seeking. In his answer, Laphen stated (among other things), "I can't tell you there is no chance for some sort of a P&L hit. *We don't have that at this point in time.*" (emphasis added). In fact, CSC's new offer reflected the company expected a significant "P&L hit" at that point in time.

51. On the same day that CSC made its revised proposal to the NHS and filed its Form 10-Q, Laphen signed a management representation letter to CSC's independent auditors. Among other things, the representations falsely stated, "[c]ontract estimates have been prepared on the basis of the most current and best available information and the underlying assumptions used in those estimates are reflective of our intentions," and "the Company's [accounting model] on the

---

[16] As noted above, GAAP requires companies to reflect the impact of a decrease in the profit margin on a contract such as this by recording an inception-to-date adjustment.

NHS contract used to prepare the third quarter 2011 financial statements represents the best estimate of the probable contract value, costs at completion, margin and margin rate based upon all known facts and contractual risks."

52. Laphen knew or should have known that CSC's financial statements in Q3FY2011 were based on the wrong accounting model, and that his disclosures regarding the NHS contract to investors and to CSC's independent auditors were false. Laphen knew the offer he authorized on February 7 or 8, 2011 would result in a lower profit margin for CSC than the company had been maintaining. Laphen also knew or should have known that CSC's updated offer to the NHS would negatively impact the company's earnings.

F. CSC's Continued Improper Accounting From Q4FY2011 Through Q2FY2012

53. One day after CSC made its revised offer on February 9, 2011, the NHS rejected CSC's proposal and made a counteroffer that would have resulted in CSC earning a *negative* profit margin. The parties then engaged in several additional months of negotiation.

54. On May 2, 2011, CSC issued a press release in which it announced that it expected to sign a non-binding Memorandum of Understanding ("MOU") with the NHS "in the next few weeks pending final NHS and other government reviews and approvals."[17] It was only then that CSC updated its accounting model to reflect the current status of the negotiations.

55. The NHS could not amend SARPA without the approval of the UK government. Though NHS personnel indicated at that time that they supported the contract amendments envisioned in the draft non-binding MOU, they gave CSC no assurance that the required approvals would be forthcoming. Indeed, by the time CSC filed its FY2011 Form 10-K on June 15, 2011, there had been significant developments that made the UK government's required approval of the proposed amendments unlikely.

56. In May 2010, the Conservative party, which had been highly critical of the NHS's IT program, won the UK general election. By May 2011, the UK National Audit Office ("NAO"), the House of Commons Public Accounts Committee ("PAC"), and the Major Projects Authority ("MPA") had all begun reviews of the program. On May 11, 2011, while taking questions in the House of Commons, UK Prime Minister David Cameron reported, "We are very concerned that the NHS IT projects that we inherited were of poor value for money, an issue we raised repeatedly in opposition." With regard to CSC's contract, the Prime Minister said, "we are absolutely determined to achieve better value for money.... [T]here are no plans to sign any new contract with Computer Sciences Corporation until the [NAO] report has been reviewed, and until the [PAC] meetings and [MPA] reviews have taken place." The Prime Minister further stated, "The Department of Health and Cabinet Office will examine all available options under the current contract, including the option of terminating some of, or indeed all of, the contract."

17 The uncertainty about the contract amendments was underscored by the NHS's unwillingness to sign even a *non-binding* MOU with CSC. This was in contrast to the *binding* MOU the NHS signed in 2008.

57. One week later, the NAO issued a report finding "the [$4.3] billion spent on care records systems so far does not represent value for money, and we do not find grounds for confidence that the remaining planned spend of [$6.9] billion will be different." The report was critical of the performance of CSC and other IT contractors involved in the project.

58. On May 23, 2011, the PAC held a public hearing concerning (among other things) the proposed contract amendments. Consistent with the Prime Minister's comments, NHS representatives stated that "all options" were under consideration, including termination of CSC's contract.

59. Two days later, the Financial Times published an article reporting the findings of a leaked UK Cabinet Office memorandum. As quoted in the article, the Cabinet Office memorandum "condemned" the proposed contract amendments as "unattractive," in that the proposed savings to the NHS were disproportionately small in comparison to the proposed reductions in product scope and volume to be delivered by CSC. As further quoted in the article, when asked to comment on the leaked memorandum, the PAC Chair stated, "It would be unspeakably unacceptable to think that in return for a one-third reduction in the cost, CSC would do two-thirds less work. If this is an opening gambit from the company, it should be given short shrift. There is no way these guys ought to be working for the government."[18]

60. Indeed, when CSC provided the NHS a proposed disclosure it intended to make in its FY2011 Form 10-K that described the MOU as "substantially agreed," the NHS refused to agree to that characterization. The NHS representative advised CSC's General Counsel, "The MOU remains unsigned and, at present, unagreed and in draft. As you know, I'm afraid that there is no guarantee that it will be signed in its current draft format or at all.... I cannot accept/agree if asked that the draft MOU is substantially agreed."

61. As a consequence of these developments, CSC and Laphen knew or should have known that approval of its proposed contract amendments by the UK government was not probable. Nevertheless, when CSC filed its FY2011 Form 10-K on June 15, 2011, it continued to base its accounting model on the assumption that the UK government would approve the contract amendments and failed to write down the value of its contract-related assets as required. Moreover, notwithstanding the NHS's refusal to agree that the non-binding MOU was "substantially agreed," CSC provided CSC's independent auditors a June 14, 2011 letter stating (among other things) that "the parties had reached substantial agreement on the terms of the MOU."

62. On August 3, 2011, the PAC released a report with findings critical of CSC's performance. The Committee recommended that the UK government consider whether to continue

[18] The Financial Times article was circulated among CSC executives (including Laphen) on the date of its publication.

the IT program. The Committee also advised the government should "give[] serious consideration to whether CSC has proved itself fit to tender for other Government work."

63. Eight days later, CSC filed its Form 10-Q for Q1FY2012. In violation of GAAP, CSC continued to base its accounting model on the proposed MOU and to carry its contract-related assets at their full value (approximately $1.4 billion).

64. On September 6, 2011, Laphen discussed the status of the MOU proposal with the account team. The account team provided Laphen with an assessment of NHS's options and listed seven possible options: "Do Nothing, Enforce SARPA, Negotiate TARPA, Whole Termination, Partial Termination, Negotiate Whole Exit, or Negotiate Partial Exit." They informed him that the MOU proposal was "probably best for the parties but politically not tenable." On September 7, 2011, NHS agreed to engage in further negotiations. On September 22, 2011, however, the MPA issued a report recommending several options, one of which included that the NHS's IT program should be "dismembered" and "reconstituted" under new management and organizational structures.

65. On November 4, 2011, the NHS provided CSC written comments on a draft earnings call script for Q2FY2012. Those comments included the following: "[CSC] make[s] a number of revenue and profit estimations based on your view of how the contract will operate if the draft, without prejudice MOU were to be signed. Whilst this is a matter for CSC, in view of your obvious historic and on-going stated doubt as to whether the draft, without prejudice MOU would be signed and our recent discussions on the subject, we question whether financial projections on that basis are appropriate."

66. On the morning of November 9, 2011, NHS provided CSC with further written comments on the proposed statement. Those comments included the following: "[W]e have a concern that the tone of the proposed Q2 comments gives a misleadingly upbeat impression of a project that is many years behind both its original schedule and the current contracted schedule. We are of the opinion that the comments could give the impression that the project is 'on track' with its delivery (which is clearly not the case). They could also give the optimistic impression that the outcome of the discussions we are about to enter will be the acceptance of CSC's 'economic proposals.' Again, it is for CSC to conclude how it must brief its shareholders on the possible or likely outcomes of the project and our discussion, but it would be remiss of us not to draw our concern to your attention, once more. Whilst we adopt our usual stance of not commenting on CSC's affairs or disclosure, if asked, we will have to explain our (contrary) view of the current state of affairs."

67. Nevertheless, when CSC filed its Form 10-Q for Q2FY2012, the company continued to base its accounting model on the MOU proposal, and still failed to write-down the value of its contract-related assets in violation of GAAP.

68. On December 21, 2011, the NHS sent CSC a letter stating, "As you know, consistent with previous concerns expressed by the PAC and the MPA, we have clearly rejected

the MoU on the grounds that it does not represent value for money." The NHS further informed CSC that recent proposals under discussion were also unacceptable.[19] On December 27, 2011, the company filed a Form 8-K announcing that neither the MOU proposal nor recent proposed amendments under discussion with the NHS would be approved. CSC reported that, consequently, the company "will be required to recognize a material impairment of its net investment in the contract in the third quarter of fiscal year 2012." On the day of the announcement, CSC's common stock declined by 9%. On February 8, 2012, CSC filed its Form 10-Q for Q3FY2012. For this filing, CSC finally ceased basing its accounting models on its proposed contract amendments, and returned to using the enforceable contract as the basis for its models. CSC also wrote down approximately $1.5 billion in NHS contract assets from its balance sheet.

Additional Disclosure Violations Relating to the NHS Contract

69. In addition to the misconduct described above, Mancuso also made misleading statements to investors about the degree to which CSC had grown dependent on refundable cash advances from the NHS to drive its fourth quarter and annual free cash flow results and failed to make required disclosures about these advances.

A. The Cash Advance Arrangement

70. At the close of each fiscal year, CSC received cash advances from the NHS based on an estimate of anticipated charges in the next fiscal year. The sizes of these advances, which were negotiated in the closing days of each fiscal year, were based on the total charges CSC expected to bill under the contract in the following year. The NHS had a contractual right to suspend the advances if CSC committed an event of default. Thus, amid ongoing project delays and an unresolved contractual dispute, the arrangement became increasingly uncertain.

71. The cash advance arrangement between the NHS and CSC operated like a secured loan. CSC effectively paid the NHS 5% interest for the advances.[20] CSC secured the advances by providing the NHS bank-issued standby letters of credit. CSC repaid the advances at the end of each year to the extent they had not been fully offset by CSC's actual charges ("the true-up"). Unlike traditional loans, though, which companies record as cash flows from *financing* activities, GAAP allowed CSC to record these advances as cash flows from *operating* activities. This

---

19 During the period December 8 to 19, 2011, CSC made further proposals to the NHS that, had they been accepted, would have limited CSC's write-down to approximately $700 million.

20 At the NHS's option, CSC could either provide the NHS a service credit valued at 5% of the advance payment or an equivalent cash payment at the end of the contract. The NHS told CSC it did not intend to use any of the service credits, favoring the cash payment.

provided a significant boost to the company's fourth quarter and annual free cash flow results — a metric that was important to investors.[21]

72. The cash advance arrangement resulted in an economic loss to CSC. In addition to paying the 5% charge to the NHS, CSC had to pay an additional 1 to 1.25% charge to banks for the standby letters of credit. In October 2010, CSC's Treasurer recommended to Mancuso and CSC's Vice President International Finance that CSC "should [not] push the cash advances higher but rather attempt to lower them" because the arrangement "results in an economic loss to CSC." CSC's Vice-President International Finance replied, "You're right – it is an expensive drug we're on!" Subsequently, however, Mancuso instructed that CSC should continue seeking the cash advances.

73. The cash advances grew increasingly large over time, peaking in CSC's fiscal year 2010, when the Company received a $580 million advance from NHS in the closing days of the fiscal year. The portions of the cash advances that CSC had to return to the NHS also grew larger over time as CSC continued to fall short of its deployment goals. CSC repaid approximately 22%, 72%, and 93% of its cash advances for fiscal years 2010, 2011, and 2012, respectively. In other words, CSC paid over 6% on hundreds of millions of dollars that it later returned to the NHS at a time when the company could have borrowed from traditional lenders for considerably less.

74. Although CSC lost money from the cash advance arrangement, it was a boon to senior executive compensation in fiscal year 2010. That fiscal year, CSC replaced another metric with free cash flow as one of four key performance measures in its Annual Management Incentive Plan. CSC's free cash flow results exceeded the fiscal year 2010 plan target, resulting in significant payouts to Laphen, Mancuso, and others.[22] Absent the $580 million NHS cash advance, CSC's free cash flow results would have fallen hundreds of millions of dollars short of the bonus plan target, resulting in no payout to the executives.

75. SEC disclosure rules required CSC to disclose the impacts of this unusual cash advance arrangement on the company's financial results.[23] However, neither Laphen nor Mancuso took any steps to ensure disclosure, and investors were kept in the dark about how CSC met its cash flow targets.

76. Indeed, when the highest rated sell-side securities analyst covering CSC repeatedly asked CSC executives about how the NHS contract was impacting the company's results, and expressed skepticism about the reliability of CSC's reported free cash flow, Laphen and Mancuso

---

[21] Financing cash flows were not a component of CSC's free cash flow; operating cash flows were.

[22] Laphen received a $630,000 bonus award for exceeding the FY2010 free cash flow target. Mancuso received a $175,500 award.

[23] Regulation S-K Item 303(a) mandated these disclosures.

directed the company's head of Investor Relations not to allow that analyst to ask any questions during CSC's earnings call question-and-answer period.

77. Moreover, on two occasions, Mancuso made public statements about the NHS advances that he knew or should have known were false and misleading.

B. <u>Mancuso's Statements During CSC's Q4FY2009 Earnings Call</u>

78. On the last day of CSC's FY2009, CSC negotiated a cash advance from the NHS of approximately $135 million. Mancuso knew about this advance: he wrote a "thank you" letter to a regional executive who helped to secure the advance, specifically noting his significant contribution to CSC's year-end "Cash Project." This advance comprised over 15% of the company's fourth quarter free cash flow.

79. However, when a financial analyst asked Mancuso during CSC's fourth quarter and fiscal year-end 2009 earnings call in May 2009 whether CSC had received "any large prepayments" from NHS or other clients during the fourth quarter of FY2009, Mancuso replied that the company had not.

C. <u>Mancuso's Statements During CSC's Q4 FY2010 Earnings Call</u>

80. At the end of FY2010, CSC worked hard to negotiate a large cash advance from the NHS. Because CSC had missed a key deployment deadline in March 2010, the NHS's willingness to give CSC a large cash advance was in doubt. Public reports of the missed deadline led to speculation that CSC would fall short of its cash flow guidance.

81. Mancuso understood this was important to investors. On March 27, 2010, Mancuso wrote to Laphen that CSC was "getting an endless string of questions from buyside and sellside analysts reacting to the british press clips [reporting on the missed NHS milestone]." Mancuso told Laphen he was "having a continuing dialogue with [CSC's Vice-President International Finance] keeping me abreast by the hour" regarding negotiations with NHS over the cash advance. Mancuso advised Laphen that the "cash is key to us being able to spin this story."

82. On the morning of April 1, 2010, Mancuso informed Laphen that CSC had received a $580 million cash advance from the NHS. Hours later, CSC reaffirmed its fiscal year-end cash flow guidance. That afternoon, Mancuso sent his subordinates an email in which he referred to CSC having "dodged a bullet." Shortly afterwards, CSC's Vice President International Finance told the NHS account team that CSC would not have been able to reaffirm its guidance "without the NHS cash and [other] work on the Q4 items…." He closed by noting, "Mike Mancuso specifically asked me to pass on this thanks to the team."

83. On May 20, 2010, during CSC's fourth quarter earnings call, Mancuso boasted to investors about the company's cash flow results, claiming "Cash is the big story." Mancuso specifically highlighted CSC's fourth quarter free cash flow of $951 million. During the earnings

call question-and-answer period, an analyst asked Mancuso to "help us understand how you hit that free cash flow number" assuming CSC "didn't hit" its NHS milestone and "didn't get a cash flow payment" from NHS. Mancuso did not disclose to the analyst that approximately 62% of CSC's fourth quarter free cash flow was attributable to the $580 million cash advance received from NHS at the close of the fiscal year, for which the company was paying over 6%, and which the company would need to repay to the NHS if it were not able to begin meeting its deployment goals. Instead, Mancuso replied that CSC had generated its free cash flow results "the old-fashioned hard way, frankly," attributing it to earnings, improvements in working capital, and "receivables." He further described the result as "a glowing achievement" and "not unnatural."

84. In addition to the accounting and disclosure fraud involving the NHS contract, two of CSC's international businesses engaged in accounting frauds as well. CSC's Australia subsidiary and its Nordic region violated fundamental GAAP principles in a variety of ways to manipulate their financial results.

CSC's Accounting Fraud in Australia

85. CSC Australia's two most senior finance executives, the subsidiary's CFO Wayne Banks and Controller Edward Parker, manipulated the company's Q1FY2009 earnings through excess accruals they maintained in "cookie jar" reserves and by failing to record expenses as required. This fraud materially overstated CSC's consolidated pretax income by over 5%. Banks's fraud resulted in at least a 4.3% overstatement in Q1FY2009. Parker's fraud encompassed all of Banks's fraud and went further, resulting in an overstatement of CSC's consolidated pretax income by 5.4% for that period. But for their misconduct, CSC would have missed analysts' earnings targets in Q1FY2009.

A. <u>CSC Australia's "Cookie Jar" Reserves</u>

86. To offset future shortfalls in budgeted operating performance, Banks and Parker maintained excess, unsupportable balances in reserve accounts. Banks and Parker built up these reserve balances primarily during CSC Australia's successful FY 2008. For example, at the close of FY2008, Banks and Parker intentionally over-accrued for "gift cards" CSC Australia was giving its employees in recognition of their efforts in meeting annual budget targets. Parker informed Banks, "while it's likely we'll pay [AUD] $150 per employee, we have booked an accrual equivalent to [AUD] $350 per employee, largely as a mechanism to carry forward a provision into FY09." This resulted in an excess reserve balance of approximately AUD $1 million, which Banks and Parker subsequently released to boost CSC Australia's Q1FY2009 earnings when it appeared the subsidiary was falling short of targets.[24]

[24] GAAP prohibits companies from maintaining excess accruals or "general reserves." Under the applicable accounting standards, a loss contingency should be recorded only if the loss is probable and reasonably estimable. *See* ASC 450-20-25-2.

87. As with the gift cards account, Banks and Parker fraudulently built up approximately AUD $2.25 million in excess reserve balances in FY2008 in accounts related to employee bonuses and a restructuring. In violation of GAAP, they accrued AUD $590,000 for bonuses when CSC Australia had no obligation or intention to pay the bonuses and AUD $1.65 million for restructuring costs despite not having a formal management restructuring plan and not having notified the affected employees.[25] Banks and Parker released most of the bonus and restructuring accruals in Q1FY2009, which boosted the subsidiary's earnings.

88. Banks and Parker also created excess accruals in CSC Australia's labor accounts in each quarter in FY2008. CSC Australia estimated labor costs each month and accrued for those expected costs. Though they knew CSC Australia's actual labor costs were significantly lower than the subsidiary had estimated, Banks and Parker maintained those excess amounts in the labor account for future use. Banks and Parker created additional excess accruals in CSC Australia's labor accounts by reserving for fictitious training costs. These improper labor accruals totaled AUD $5.4 million by year-end FY2008. Banks and Parker released AUD $3.5 million of these accruals — and Parker released the remaining AUD $1.9 million in Q1FY2009 to improve CSC Australia's reported results.

B. <u>CSC Australia's Failure to Record Expenses as Required</u>

89. Banks and Parker further misstated CSC's Q1FY2009 earnings by failing to record costs as required. GAAP permitted CSC Australia to capitalize "contract acquisition costs" – i.e. expenses the company incurred in attempting to win business.[26] However, if CSC Australia were unable to win this business, GAAP required the company to expense these costs in that period.[27] In Q1FY2009, Banks and Parker knew CSC Australia had failed to win a contract with a potential customer on a project that had AUD $1.5 million in contract acquisition costs. Nevertheless, CSC Australia did not expense the AUD $1.5 million as GAAP required.

CSC's Accounting Fraud in the Nordic Region

90. During FY2010, finance personnel in CSC's Nordics region fraudulently overstated the region's operating results. Former Nordics Finance Director Paul Wakefield, and Nordics Finance Managers Chris Edwards and Claus Zilmer improperly accounted for client disputes; overstated assets; and failed to record expenses as required. This fraud overstated CSC's

---

[25] GAAP requires management to commit to a plan of termination in order to record a termination reserve. *See* ASC 420-10-25-4.

[26] *See* ASC 605-20-25-4 and ASC 310-20-35-2; *see also* SAB Topic 13.A.3(f).

[27] *Id.*

consolidated operating income by 5% in Q1FY2010, 3% in Q2FY2010, 4% in Q3FY2010, and 7% in Q4FY2010.

A. CSC's Improper Accounting for Client Disputes

91. By improperly accounting for a settlement with a Danish client, CSC overstated its operating income by $9 million in Q4FY2010. The client had agreed to forgo legal action against CSC if the company gave it $165,000 in cash and $9 million in service credits. In February 2010, the Director of CSC Nordics' Denmark Public Sector and the client signed three agreements: a settlement agreement reflecting the cash payment and two side agreements reflecting the much larger service credits.

92. GAAP required CSC to record the entire $9,165,000 as an expense in Q4FY2010.[28] However, CSC did not do so because the Director concealed the connection between the three agreements. The Director told local in-house counsel that the settlement agreement and two side agreements were unrelated. When an early version of the settlement agreement referenced the price credits, he directed the attorney to remove that reference. As a consequence of this misrepresentation, CSC expensed only the $165,000 portion of the settlement, thereby overstating its operating income by $9 million.

93. CSC also overstated its unbilled receivables in Q3FY2010 and Q4FY2010 in connection with another client dispute. In June 2009, a client terminated CSC Nordics' work on a project that CSC had forecast would generate $900,000 in revenue. CSC Nordics asserted that the client was liable for the $900,000. Though the client had not agreed to pay this amount, Zilmer recorded $900,000 as an unbilled receivable relating to this claim in November 2009. This violated GAAP requirements for gain contingencies and improperly increased CSC's operating income by $900,000 in Q3FY2010.[29]

94. In Q4FY2010, CSC Nordics agreed to accept only $90,000 from the client to resolve this claim. Zilmer, who was responsible for the accounting for this transaction, received a copy of the settlement agreement during that period. However, Zilmer waited to write-off the $810,000 in uncollectable revenue until *after* CSC had closed its books for FY2010, thereby overstating the company's results.

B. CSC Nordics Manipulates its Earnings by Overstating the Value of an Asset

---

[28] GAAP provides that a loss contingency is recorded if the loss is probable and reasonably estimable. Both of these conditions were clearly met with the signed side agreements. *See* ASC 450-20-25-2.

[29] GAAP generally prohibits recording gain contingencies in financial statements. *See* ASC 450-30-25-1

95. In Q3FY2010, CSC overstated its income by over $4 million by failing to write-down the value of an asset as required by GAAP. In October 2009, CSC Nordics contracted with a vendor to exchange one of the company's mainframe computers. At that time, CSC Nordics valued the old mainframe at its net book value (cost minus accumulated depreciation) of $5.2 million though its fair market value was only a fraction of that amount. When CSC Nordics disposed of this mainframe in the exchange transaction, GAAP required the company to record a $4.5 million write-down.[30]

96. To avoid this result, CSC Nordics and the vendor entered into a sham arrangement that instead resulted in a gain from the transaction. Rather than issue an invoice to CSC Nordics for the true value of the new mainframe, the vendor significantly over-charged CSC Nordics, then gave the company a credit note for the difference. CSC Nordics personnel then used the credit note (which was for $5.6 million) to offset the $5.2 million write-down of the old mainframe. This resulted in the company improperly recording a $400,000 gain from the deal, rather than a $4.5 million loss as required by GAAP.

C. The Improper Capitalization of Expenses

97. Throughout FY2010, CSC Nordics improperly overstated its income by failing to record expenses associated with certain labor costs. These costs involved compensation the company paid to employees who were not working on any company projects ("bench labor"). Consistent with GAAP, CSC Nordics originally expensed the compensation it paid to these employees. To improve its operating results, however, CSC Nordics later reversed these expenses. With Wakefield's approval, Zilmer improperly capitalized bench labor costs totaling $8.2 million,[31] significantly reducing CSC Nordics' FY2010 expenses and artificially improving CSC's operating income.

98. In addition, Wakefield, Zilmer, and Edwards improperly capitalized various other expenses using "prepaid" asset accounts.[32] For example, Wakefield manipulated CSC Nordics' results in Q3FY2010 by directing that $1.4 million in office moving and capitalized server costs, which GAAP required the company to expense, be moved to a prepaid asset account to be amortized over time.[33] In Q4FY2010, Zilmer improperly overstated CSC Nordics' income simply

[30] GAAP provides that the cost of a nonmonetary asset acquired in exchange for another nonmonetary asset is the fair value of the asset surrendered to obtain it. *See* ASC 845-10-30-1.

[31] In violation of GAAP, Zilmer did this by improperly recording bench labor costs as "transition and transformation costs." Under CSC policy, legitimate transition and transformation costs were capitalizable.

[32] By the end of FY2010, CSC Nordics had over $30 million in prepaid assets that were unsupported.

[33] GAAP prohibits recording current period expenses as prepaid expenses. *See* ASC 340-10-5-4, "Other Assets and Deferred Costs" (defining prepaid expenses as a category of assets that are paid in advance of their use or consumption and providing that prepaid expenses should be deferred and expensed over time in the period in which they are utilized).

by reversing a journal entry that had properly expensed $1.4 million in contract costs, and re-recording these costs as prepaid assets on the company's balance sheet. Edwards also improperly recorded current period costs in prepaid accounts, and mislabeled journal entries to make it appear as though those costs were prepaid assets that CSC could amortize over multiple periods.[34]

Laphen's and Mancuso's Bonuses and Incentive-Based Compensation

99. The misconduct described above resulted in material misstatements to CSC's financial statements in FY2010, FY2011, and FY2012. CSC was required to restate its financial statements in those periods. During the 12-month periods that followed the filing of these periodic reports, Laphen and Mancuso received bonuses and incentive-based compensation. Neither Laphen nor Mancuso has reimbursed those amounts to CSC.

VIOLATIONS

100. Securities Act Section 17(a)(1), Exchange Act Section 10(b) and Rule 10b-5 thereunder prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

101. Securities Act Section 17(a)(2) prohibits any person from obtaining money or property in the offer or sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

102. Securities Act Section 17(a)(3) prohibits any person from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser in the offer or sale of securities.

103. Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder require that every issuer of a security registered pursuant to Exchange Act Section 12 file with the Commission, among other things, annual and quarterly reports as the Commission may require, and, pursuant to Rule 13a-14, mandate, among other things, that an issuer's principal executive and principal financial officers certify each periodic report.

104. Rule 12b-20 under the Exchange Act requires that, in addition to the information expressly required to be included in a statement or report filed with the Commission, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made not misleading.

---

[34] *Id.*

105. Exchange Act Section 13(b)(2)(A) requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

106. Exchange Act Section 13(b)(2)(B) requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP.

107. Exchange Act Section 13(b)(5) prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account described in Section 13(b)(2).

108. Rule 13b2-1 under the Exchange Act prohibits any person from, directly or indirectly, falsifying or causing to be falsified, any book, record, or account subject to Exchange Act Section 13(b)(2)(A).

109. Section 304 of the Sarbanes-Oxley Act of 2002 requires the chief executive officer and chief financial officer of an issuer that is required to prepare an accounting restatement due to its material noncompliance, as a result of misconduct, with any financial reporting requirement under the securities laws to reimburse the issuer for any bonus or other incentive-based or equity-based compensation the chief executive officer or chief financial officer received during the 12-month period following the first public issuance or filing of the financial document embodying such financial reporting requirement, and any profits realized from the sale of the issuer's securities during that 12-month period.

110. As a result of the conduct described above, CSC violated Securities Act Section 17(a) and Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 10b-5, 12b-20, 13a-1, and 13a-13.

111. As a result of the conduct described above, Laphen willfully[35] violated Securities Act Sections 17(a)(2) and (a)(3), Exchange Act Rules 13a-14 and 13b2-1, and Sarbanes-Oxley Act Section 304, and caused CSC's violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 12b-20, 13a-1, and 13a-13 thereunder.

112. As a result of the conduct described above, Mancuso violated Securities Act Sections 17(a)(2) and (a)(3) and Exchange Act Rule 13a-14, and Sarbanes-Oxley Act Section 304,

---

[35] This use of the word "willfully" does not reflect a finding that Laphen acted with the intention to violate the law or knowledge that he was doing so. As used in the governing provisions of law, "willfully" means only that the actor "intentionally committed the act which constitutes the violation." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965); *see also Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). "There is no requirement that the actor also be aware that he is violating one of the Rules or Acts . . . ." *Tager*, 344 F.2d at 8.

and caused CSC's violations of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, and 13a-13 thereunder.

113. As a result of the conduct described above, Banks willfully violated Securities Act Section 17(a), Exchange Act Sections 10(b) and 13(b)(5), and Rules 10b-5(a) and (c) and 13b2-1 thereunder, and willfully aided and abetted and caused CSC's violations of Securities Act Section 17(a), Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 10b-5, 13a-1, and 13a-13 thereunder.

114. As a result of the conduct described above, Zilmer violated Exchange Act Rule 13b2-1 and caused CSC's violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 13a-1 and 13a-13 thereunder.

115. As a result of the conduct described above, Wakefield willfully violated Securities Act Section 17(a), Exchange Act Sections 10(b) and 13(b)(5), and Rules 10b-5(a) and (c) and 13b2-1 thereunder, and willfully aided and abetted and caused CSC's violations of Securities Act Section 17(a), Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 10b-5, 13a-1, and 13a-13 thereunder.

CSC'S REMEDIAL EFFORTS

In determining to accept CSC's Offer, the Commission considered remedial acts undertaken by CSC and cooperation afforded the Commission staff in connection with the misconduct in the Nordic region and Australia.

IV.

Respondent CSC has undertaken to:

A. Retain, at CSC's expense within 30 days of issuance of this Order, qualified independent ethics and compliance consultant (the "Consultant") with extensive experience in developing, implementing and overseeing organizational compliance and ethics programs, not unacceptable to the staff, to conduct an ethics and compliance program assessment focused on the components of the program delineated in (1)-(3) below. The Consultant shall also have expertise in, or retain someone with expertise in, internal accounting controls and public company financial reporting as well as percentage of completion accounting. Taking into account the Company's remedial actions to date, CSC shall cause the Consultant to analyze whether the components of CSC's ethics and compliance program as they relate to the areas described in (1)-(3) below have been implemented successfully and are having the desired effects. The Consultant will determine whether the culture is supportive of ethical and compliant conduct, including strong, explicit, and visible support and commitment by the Board and senior management. In discharging this undertaking, the Consultant shall:

1. evaluate and assess the effectiveness of the internal accounting controls and financial reporting policies and procedures, including but not limited to:

a. whether CSC's internal accounting controls are sufficient to provide reasonable assurances that the company is maintaining fair and accurate books, records and accounts, with particular emphasis on whether they are designed to address the integrity of its revenue accounting and ensure consistent accuracy and integrity given the global nature of CSC's business;

b. whether CSC has specific accounting and financial reporting controls and procedures sufficient to ensure that all accounting models comply with applicable accounting rules and policies, and updated revenue accounting models are prepared as required.

2. evaluate and assess whether CSC has disclosure controls and procedures designed to ensure that all material information necessary to understand CSC's financial condition and operating results, including material operational risks, uncertainties, and trends, are appropriately disclosed on a timely basis. The review shall include, but not be limited to,

a. whether the work of CSC's delivery assurance group receives appropriate visibility and consideration for disclosure purposes;

b. whether CSC's disclosure committee is sufficiently independent to ensure broad and robust consideration of all potentially material operational risks and uncertainties; and

c. whether CSC's corporate culture has any impact (positive or negative) on the company's ability to comply fully with its disclosure obligations.

3. evaluate, for purposes of analyzing the areas addressed above in (1) and (2), whether there are proper resources, oversight and independence of the compliance and ethics function, including seniority of corporate executives responsible for implementation and oversight, reporting lines, autonomy and independence, compensation and rewards, consistent discipline, resources, and access to information and personnel. The review shall include sufficiency of training and guidance, including regarding anti-retaliation and whistleblowing.

B. Provide the Consultant with complete access and resources to review key documents (e.g., business principles, Code of Conduct, policies and procedures, risk assessments, performance evaluation forms, relevant internal training materials and internal communications). In reviewing the creation, administration and implementation of the compliance and ethics program as it relates to the areas addressed in ¶ A, the Consultant shall conduct an assessment survey and interview relevant personnel. The assessment need not be a comprehensive review of all business lines, activities and markets but can use a risk-based approach. The Consultant shall consider, however, the breakdown of internal controls in multiple markets and continents during the relevant time period of this action;

C. Provide a report to the Commission staff and CSC's General Counsel and Chief Ethics and Compliance Officer, as described below, regarding the Consultant's findings and recommendations;

D. Provide a copy of the engagement letter detailing the Consultant's responsibilities to Stephen L. Cohen, Associate Director, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549;

E. Cooperate fully with the Consultant, including providing the Consultant with access to its files, books, records and personnel as reasonably requested for the above-described review except to the extent such files, books, or records are protected from disclosure by any applicable protection or privilege such as the attorney-client privilege or the attorney work product doctrine. To the extent that the Consultant believes that documents are being withheld unreasonably, CSC shall work cooperatively with the Consultant to resolve the matter, and if they are unable to reach agreement, the Consultant shall promptly notify the Commission staff. To ensure the independence of the Consultant, CSC shall not have the authority to terminate the Consultant without prior written approval of the Commission's staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates;

F. Require the Consultant to report to the Commission staff on his/her activities as the staff shall request;

G. Permit the Consultant to engage such assistance, clerical, legal or expert, as necessary and at reasonable cost, to carry out his/her activities, and the cost, if any, of such assistance shall be borne exclusively by CSC;

H. Require, within 120 days of the issuance of this Order unless otherwise extended by the Commission staff for good cause, the Consultant to complete the review and report to the Commission staff and CSC's General Counsel and Chief Ethics and Compliance Officer concerning:

1. the scope and methodologies used by the Consultant in order to complete the review;

2. CSC's compliance with the review;

3. the adequacy of CSC's existing policies, practices and procedures regarding the matters assessed; and

4. the Consultant's recommendations, if necessary, regarding modification or supplementation of CSC's policies, practices and procedures related to the matters assessed (the "Recommendations").

I. Adopt and implement, within 120 days of CSC's receipt of the Recommendations, all of the Recommendations; provided, however, that as to any Recommendation that CSC considers to be, in whole or in part, unduly burdensome or impractical, CSC may submit in writing to the Consultant and the Commission staff (at the address set forth above), within 60 days of receiving the Recommendations, an alternative policy, practice or procedure designed to achieve the same objective or purpose. CSC and the Consultant shall then attempt in good faith to reach an agreement relating to each Recommendation that CSC considers to be unduly burdensome or impractical and the Consultant shall reasonably evaluate any alternative policy, practice or procedure proposed by CSC. Such discussion and evaluation shall conclude within 90 days after CSC's receipt of the Recommendations, whether or not CSC and the Consultant have reached an agreement. Within 14 days after the conclusion of the discussion and evaluation by CSC and the Consultant, CSC shall require that the Consultant inform CSC and the staff (at the address set forth above) of his/her final determination concerning any Recommendation that CSC considers to be unduly burdensome or impractical. CSC shall abide by the determinations of the Consultant and, within 60 days after final agreement between CSC and the Consultant or final determination by the Consultant, whichever occurs first, CSC shall adopt and implement all of the Recommendations that the Consultant deems appropriate;

J. Within 14 days of CSC's adoption of all of the Recommendations that the Consultant deems appropriate, CSC's General Counsel and Chief Ethics and Compliance Officer shall certify in writing to the staff (at the address set forth above) that CSC has adopted and implemented all of the Consultant's Recommendations and that CSC has established policies, practices and procedures that are consistent with the findings of this Order;

K. Require the Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with CSC or any of their present or former affiliates, directors, officers, employees or agents acting in their capacity as such. The agreement will also provide that the Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in the performance of his/her duties under this Order shall not, without the prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with CSC, or any of their present or former affiliates, directors, officers, employees or agents acting in their capacity as such, for the period of the engagement and for a period of two years after the engagement;

L. Certify in writing to the Commission staff (at the address set forth above), in the second year following the issuance of this Order, that CSC has established and continues to maintain policies, practices and procedures consistent with the findings of this Order;

CSC may apply to the Commission staff for an extension of the deadlines described above before their expiration, and upon a showing of good cause by CSC, the Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate;

V.

In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondents Laphen, Mancuso, and Wakefield (i) agree to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoint Respondents' undersigned attorneys as agents to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the interview or testimony reimburses Respondents' travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consent to personal jurisdiction over Respondents in any United States District Court for purposes of enforcing any such subpoena.

In determining whether to accept Laphen's, Mancuso's, and Wakefield's Offers, the Commission has considered these undertakings.

VI.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 4C and 21C of the Exchange Act, and Rule 102(e) of the Commission's Rules of Practice, it is hereby ORDERED, effective immediately, that:

A. CSC cease and desist from committing or causing any violations and any future violations of Securities Act Section 17(a), Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B), and Rules 10b-5, 12b-20, 13a-1, and 13a-13.

B. Laphen cease and desist from committing or causing any violations and any future violations of Securities Act Sections 17(a)(2) and (a)(3), Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B), Rules 12b-20, 13a-1, 13a-13, 13a-14, and 13b2-1 thereunder, and Sarbanes-Oxley Act Section 304.

C. Laphen is denied the privilege of appearing or practicing before the Commission as an accountant.

D. After three years from the date of this Order, Laphen may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Laphen's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Laphen, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Laphen, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Laphen has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Laphen acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

E. The Commission will consider an application by Laphen to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Laphen's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

F. Mancuso cease and desist from committing or causing any violations and any future violations of Securities Act Sections 17(a)(2) and (a)(3), Exchange Act Section 13(a) and Rules 12b-20, 13a-1, 13a-13, and 13a-14 thereunder, and Sarbanes-Oxley Act Section 304.

G. Zilmer cease and desist from committing or causing any violations and any future violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 13a-1, 13a-13, and 13b2-1 thereunder.

H. Banks cease and desist from committing or causing any violations and any future violations of Securities Act Section 17(a), Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5), and Rules 10b-5, 13a-1, 13a-13, and 13b2-1 thereunder.

I. Banks be, and hereby is, prohibited for four years from the date of this Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

J. Banks is denied the privilege of appearing or practicing before the Commission as an accountant.

K. After four years from the date of this Order, Banks may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Banks's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Banks, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Banks, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Banks has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Banks acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

L. The Commission will consider an application by Banks to resume appearing or practicing before the Commission provided that his practicing certificate is current, and he has resolved all other disciplinary issues with Chartered Accountants Australia and New Zealand. However, if licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Banks's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

M. Wakefield cease and desist from committing or causing any violations and any future violations of Securities Act Section 17(a), Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5), and Rules 10b-5, 13a-1, 13a-13, and 13b2-1 thereunder.

N. Wakefield be, and hereby is, prohibited for three years from the date of this Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

O. Wakefield is denied the privilege of appearing or practicing before the Commission as an accountant.

P. After three years from the date of this Order, Wakefield may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Wakefield's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Wakefield, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Wakefield, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Wakefield has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Wakefield acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

Q. The Commission will consider an application by Wakefield to resume appearing or practicing before the Commission provided that his practicing certificate is current, and he has resolved all other disciplinary issues with the Institute of Chartered Accountants in England and Wales. However, if licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Wakefield's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

R. Within 7 days of the entry of this Order, CSC shall pay a civil money penalty of $190,000,000; Laphen shall pay a civil money penalty of $750,000; Mancuso shall pay a civil money penalty of $175,000; and Banks shall pay disgorgement of $10,990, which represents profits gained as a result of the conduct described herein, and prejudgment interest of $2,400, to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 U.S.C. § 3717.

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

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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) Respondents 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

T. Payments by check or money order must be accompanied by a cover letter identifying 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 Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

U. Within 7 days of entry of this Order, Laphen shall pay CSC $3,771,000 and Mancuso shall pay CSC $369,100 pursuant to Sarbanes-Oxley Act Section 304. Laphen and Mancuso shall deliver proof of satisfying payment to Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

V. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the civil money penalties referenced in paragraph R above. Regardless of whether any such Fair Fund distribution is made, 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, each Respondent agrees that in any Related Investor Action, Respondent shall not argue that it/he is entitled to, nor shall it/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, each Respondent agrees that it/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 any 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.

W. Respondent CSC shall comply with the undertakings enumerated above in Section IV.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75113 / June 5, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31661 / June 5, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16576

In the Matter of

Mark G. Brickman and
Mark E. Baratto

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) 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 15(b) 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 Mark G. Brickman ("Brickman") and Mark E. Baratto ("Baratto" and collectively with Brickman, the "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, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) and 21C of the Exchange Act and Section 9(b) of the Investment Company Act, 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

1. From approximately October 2008 to March 2013 (the "Relevant Period"), Mark G. Brickman and Mark E. Baratto founded, owned, and operated three day trading firms that improperly operated as unregistered broker-dealers. Each of the three businesses that Brickman and Baratto operated – Broad Street Trading, Broad Street International, and International Brokers – were day trading firms in which traders, in exchange for making an initial deposit of money to open a sub-account with the firm, received various services that allowed them to day trade securities. In particular, Brickman and Baratto personally created sub-accounts for traders, held customer funds and securities, provided each trader trading capital (margin) that exceeded the limits of FINRA's pattern-day trading rules, arranged the use of direct access electronic trading platforms, and enabled market access via an omnibus account that Brickman's and Baratto's firms had through a U.S. based clearing firm. In exchange for these services, each of the firms charged the traders transaction-based compensation consisting of commissions on purchases and sales of securities. Despite the fact that they solicited customers, provided brokerage services, and charged transaction-based compensation, Brickman and Baratto failed to register any of these three firms as broker-dealers with the Commission. By engaging in this conduct, Brickman and Baratto, each acting directly and through the three unregistered firms they controlled and operated, willfully violated Section 15(a)(1) of the Exchange Act.

RESPONDENTS

2. **Mark G. Brickman**, age 45, is a Miami, Florida resident and was the co-founder, co-owner, and co-principal of Broad Street Trading, Broad Street International, and International Brokers, along with Baratto. Brickman has never held any FINRA licenses.

3. **Mark E. Baratto**, age 40, is a Miami, Florida resident and was the co-founder, co-owner, and co-principal of Broad Street Trading, Broad Street International, and International Brokers along with Brickman. Baratto has never held any FINRA licenses.

OTHER RELEVANT ENTITIES

4. **Broad Street Trading, LLC** ("BST") was a Florida LLC that operated in New York providing services to day trading customers from approximately October 2008 through May 2011. BST is now defunct and was not registered with the Commission in any capacity.

---

[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.

5. **Broad Street International** ("BSI") was formed as a Cayman Islands exempted company in August 2010 and was restructured as a Nevis LLC in June 2011. It began operating in January 2011 and operated until April 2012. BSI is now defunct and was not registered with the Commission in any capacity.

6. **International Brokers, Inc.** ("IB") was formed in January 2012 as a Belize company and was licensed as a broker-dealer with the Belize International Financial Services Commission. Brickman and Baratto owned and operated it from April 2012 through approximately March 2013. IB is now defunct and was not registered with the Commission in any capacity.

7. **Broad Street Securities Group, LLC** ("BSSG") was a Delaware limited liability company that Brickman and Baratto operated from New York approximately from January 2011 through June 2012. Unlike BST, BSI, and IB, BSSG was an SEC-registered broker-dealer and a CBOE Stock Exchange member.

FACTS

THE FORMATION AND OPERATION OF BROAD STREET TRADING

8. Beginning in approximately October 2008, Brickman and Baratto operated Broad Street Trading, LLC, a New York-based business. Both Brickman and Baratto were equal partners in the business and jointly owned 100% of it.

9. Brickman and Baratto, via the firm's website and other means, marketed BST as a proprietary day trading firm in which traders could obtain large amounts of trading capital, referred to as margin or leverage, for day trading. Brickman and Baratto solicited potential customers for the firm via the firm's website, word of mouth, Craigslist postings, and open houses.

10. In order for a trader to become associated with BST, Brickman and Baratto required each trader to make an initial deposit of at least $5,000 with the firm. BST then established an individual sub-account for that trader but retained effective custody and control over the sub-account. Such sub-accounts were visible only to BST, and not to the clearing broker at which BST maintained an omnibus account. Most of BST's day traders made initial deposits into their individual sub-accounts that were substantially less than the $25,000 minimum account equity required for pattern day traders who are customers of registered broker-dealers.[2]

11. Once the trader made an initial deposit – and also signed a customer agreement with BST – the firm provided the trader with various services. First, Brickman and Baratto extended trading capital to each trader at a ratio that ranged from 5:1 to 10:1. Thus, if a trader

2 FINRA Rules define "pattern day trader" as a customer who executes four or more day trades within five business days, except if the number of day trades is 6% or less of total trades for the five business day period. FINRA Rule 2520(f)(8)(B)(ii). FINRA rules require broker-dealers to ensure that every pattern day trader maintains minimum equity of $25,000 in the trader's account at all times. FINRA Rule 2520(f)(8)(B)(iv)(a).

deposited the minimum amount of $5,000 to open a sub-account, between $25,000 and $50,000 was available to the trader for trading. This ratio exceeded the amount of margin that may be provided by a registered broker-dealer subject to FINRA's pattern day trading rules.[3]

12. Second, the firm arranged for each trader to have access to electronic trading platforms that allowed the traders to directly access the U.S. securities markets. Third, the firm arranged for each trader to have access to an online system that allowed the trader to monitor his or her account activity and holdings. Fourth, the firm provided each trader with market access through an omnibus account that the firm had through a U.S. based clearing firm. Fifth, the firm provided customer service and technical support and helped arrange for traders to obtain access to specific trading centers.

13. In exchange for these services, BST charged the traders various fees. To effectuate trades on behalf of BST and its sub-account holders, the U.S. based clearing firm charged commissions to BST. BST marked up these commissions when passing them along to the sub-account holders.

14. For trades in penny-stock securities, commissions were charged on a flat, per-ticket basis. BST often required the traders to pay approximately $1.25 extra per trade on the flat ticket charges. Thus, if the clearing firm charged BST $.50 on such penny stock trades, BST charged its traders $1.75 on those trades, and kept the difference of $1.25 per trade as profit.

15. For trades in non-penny stock securities, commissions were charged on a per-share basis. BST often required the traders to pay an extra $1 per 1,000 shares for their trades. Thus, if the clearing firm charged BST $2 per 1,000 shares traded, BST charged its traders $3 per 1,000 shares traded, and kept the difference of $1 per 1,000 shares as profit.

16. Moreover, BST charged the traders various other fees, including training fees for trading courses that traders were required to take. BST also marked up each trader's monthly fee for access to direct access electronic trading platforms. Also, BST shared in the profits of less experienced traders – receiving a percentage – typically 5% – of those traders' net profits.

17. BST held itself out as a "proprietary" trading firm, rather than as a broker-dealer serving customers. But in practice, BST imposed restrictions on each trader's sub-account in order to limit trading losses. In particular, BST closely monitored the traders' transactions and immediately suspended the market access of any trader whose account balance had fallen below $1,000. Moreover, in the event that a trader lost more than his or her amount on deposit, BST attempted – sometimes successfully – to recoup the lost funds directly from the trader.

18. While BST had a small number of other employees, Brickman and Baratto handled a substantial portion of BST's functions on their own. For example, Brickman controlled BST's finances, interfaced with the firm that executed and cleared the traders' purchases and sales of

[3] FINRA Rules restrict the amount of intraday buying power available to pattern day traders by limiting the amount of margin capital granted by broker-dealers to a ratio of 4:1. ("Whenever day trading occurs in a customer's margin account the special maintenance margin required for the day trades in equity securities shall be 25% of the cost of all the day trades made during the day.") FINRA Rule 2520(f)(8)(B)(iii).

securities, and oversaw trading activity and risk management. He also coordinated with the providers of direct access electronic trading platforms to obtain software, log-in credentials and user support for each trader. Baratto established and operated BST's website, conducted marketing and advertising to solicit traders, fielded inquiries from prospective traders, and established the firm's relationship with new traders.

THE FORMATION AND OPERATION OF BROAD STREET SECURITIES GROUP AND THE CONTINUED OPERATION OF BROAD STREET TRADING

19. Approximately in late 2009, Brickman and Baratto became aware that a firm might be required to register as a broker-dealer if it charged traders commissions for securities transactions. Accordingly, in April 2010, Brickman and Baratto filed a Form BD to register a new firm, Broad Street Securities Group as a broker-dealer. BSSG was approved as a registered broker-dealer in November 2010.

20. BSSG operated as a day trading firm just like BST, but BSSG was subject to the regulatory requirements imposed upon registered broker-dealers. Moreover, to trade with BSSG, traders were required to have their Series 56 license, consistent with CBOE Stock Exchange requirements. BSSG was not profitable because, among other things, many prospective traders did not wish to spend the time and expense to obtain their Series 56 licenses.

21. During BSSG's operation – and despite being aware that BST might be operating improperly as an unregistered broker-dealer – Brickman and Baratto never registered BST with the Commission and continued to operate BST in the same manner until approximately April 2011.

THE FORMATION AND OPERATION OF BROAD STREET INTERNATIONAL

22. In August 2010, Brickman and Baratto formed yet another unregistered entity, this time an entity called Broad Street International. BSI began trading and operating in January 2011.

23. As with BST, Brickman and Baratto wholly owned and fully controlled BSI, and each held generally the same duties and responsibilities as during the operation of BST.

24. BSI operated in the same manner as BST. In particular, Brickman and Baratto – through BSI – facilitated traders' effecting of securities transactions by establishing sub-accounts for them, obtaining access to electronic trading platforms for them, and providing them large amounts of margin capital that exceeded the pattern-day trading rules. As with BST, they obtained transaction-based compensation from traders in the form of commissions, and monitored the traders' sub-accounts through "risk of loss" trading restrictions. Moreover, Brickman and Baratto solicited traders to join BSI by the same mechanisms they used to solicit traders to join BST. Numerous traders who had been customers of BST eventually became customers of BSI.

25. Neither Brickman nor Baratto took any steps to register BSI as a broker-dealer with the Commission, despite knowing when they formed it that they might have improperly operated BST – BSI's functionally similar predecessor – as an unregistered broker-dealer. On the contrary, Brickman and Baratto sought to make BSI appear to be foreign, so that it might appear

eligible for Exchange Act Rule 15a-6, which exempts from the broker-dealer registration requirement some foreign broker-dealers meeting certain specific criteria.

26. Specifically, Brickman and Baratto engaged in several acts of subterfuge to make BSI appear to be an offshore entity, despite operating BSI exclusively from New York and Florida. They formed BSI as a Cayman Islands entity, and later restructured it as a Nevis entity, and publicly gave the address of their registered agent in those nations as their operating address, notwithstanding that BSI had no business operations in either the Cayman Islands or Nevis.

27. Moreover, Brickman and Baratto claimed, including on BSI's website, that BSI only served non-U.S. traders. In reality, BSI served many traders who were located in the United States. Brickman and Baratto also transferred the firm's omnibus brokerage account from its U.S. based clearing firm to the U.K. affiliate of that firm in order to create the impression that BSI's trades were cleared by a foreign broker-dealer when, in reality, the clearing arrangement was functionally identical to that used by BST.

28. In addition, Baratto, with Brickman's knowledge, submitted to the clearing firm numerous documents which identified a relative of Baratto – who was a dual U.S.-Canadian citizen – as BSI's owner and chief executive. Specifically, Baratto created an electronic image of the relative's passport signature, and electronically inserted that image on at least seven BSI corporate documents and ten account forms he provided to the clearing broker. This relative, however, had no involvement with, or economic interest in, BSI.

29. Brickman and Baratto operated BSI from approximately January 2011 through April 2012, and during that time, solicited customers, provided brokerage services, and obtained transaction-based compensation from traders in the form of commissions. During that entire period, however, BSI was not registered as a broker-dealer with the Commission.

THE FORMATION AND OPERATION OF INTERNATIONAL BROKERS

30. In April 2012, Brickman and Baratto began operating a new entity named International Brokers, Inc., a Belizean corporation licensed as a broker-dealer only in Belize. Brickman and Baratto owned and controlled IB, and each held generally the same duties and responsibilities as during their operation of BST and BSI. IB was a successor to BSI, assuming its operations and taking over the omnibus account BSI had with its clearing broker-dealer. As with BSI, Brickman and Baratto employed various ruses to make IB appear to be a non-U.S. entity eligible for Exchange Act 15a-6's foreign broker-dealer registration exemption.

31. Baratto, with Brickman's knowledge, again installed Baratto's relative as the figurehead principal of IB by electronically inserting that relative's passport signature onto corporate documents and brokerage account forms. As with BSI, that relative also had no involvement with, or economic interest in, IB.

32. Brickman and Baratto also claimed, including on IB's website, that IB did not provide services to U.S. residents. However, IB served many traders located in the United States. Also, IB maintained its omnibus account with the same clearing firm's U.K. affiliate in order to create the impression that IB's trades were cleared by a foreign broker-dealer. Brickman and

Baratto also registered IB with the Belizean International Financial Services Commission in order to market IB as a licensed "offshore broker-dealer." In reality, IB had no operations in Belize and was overseen from the same Florida office used to operate BSI.

33. IB operated in a manner very similar to its predecessors, BST and BSI. In particular, Brickman and Baratto – through IB – provided traders with trading capital in ratios of 5:1, 10:1 and even 20:1 – far in excess of the amounts permitted under pattern-day trading rules. As with BST and BSI, IB set up traders with electronic trading platforms and an online account management system and provided customer service and technical support. IB also monitored the traders' profit and loss status through "risk of loss" trading restrictions. Numerous traders who had been customers of BSI eventually became customers of IB.

34. Brickman and Baratto owned and operated IB from approximately April 2012 to March 2013 and during that time solicited customers, provided brokerage services, and obtained transaction-based compensation from traders in the form of commissions. During that entire period, however, IB was not registered as a broker-dealer with the Commission.

VIOLATION

35. Section 15(a)(1) of the Exchange Act makes it unlawful for any broker or dealer "to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered" in accordance with Section 15(b) of the Exchange Act. Scienter is not required in order to prove a violation of Section 15(a)(1).[4]

36. Section 3(a)(4) of the Exchange Act defines a "broker" as a person, including a company, engaged in the business of effecting transactions in securities for the account of others. A person acts as a broker if it regularly "participates in securities transactions at key points in the chain of distribution."[5] Actions indicating that a person is "effecting" securities transactions include soliciting investors; handling customer funds and securities; participating in the order-taking or order-routing process; and extending or arranging for the extension of credit in connection with a securities transaction. A key factor indicating that a person is "engaged in the business" is the receipt of transaction-based compensation.[6]

---

4 See SEC v. Nat'l Executive Planners, Ltd., 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).

5 See Massachusetts Fin'l Servs. v. SIPC, 411 F. Supp. 411, 415 (D. Mass. 1976).

6 See, e.g., Release No. 34-22172 (June 27, 1985), 50 FR 27946 (July 9, 1985), at Section II.B (discussing the role of transaction-based compensation in determining whether associated persons of an issuer are deemed to be brokers). See also SEC v. Corporate Relations Group, Inc., 2003 U.S. Dist. LEXIS 24925, at *56 (M.D. Fla. Mar. 28, 2003); SEC v. Hansen, 1984 U.S. Dist. LEXIS 17835, at *26 (S.D.N.Y. April 6, 1984). While receipt of transaction-based compensation in connection with participation in securities transactions is sufficient to show a

37. As a result of the conduct described above, Brickman and Baratto, each acting directly and through the three unregistered broker-dealers they owned, controlled, and operated, willfully[7] violated Section 15(a)(1) of the Exchange Act. In particular, although these firms were not registered with the Commission, Brickman and Baratto solicited traders to engage in securities transactions through sub-accounts at the firms, provided brokerage services, and received transaction-based compensation related to the trading.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents Brickman and Baratto shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondents Brickman and Baratto be, and hereby are:

> 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 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.

C. Respondents Brickman and Baratto jointly and severally shall pay disgorgement totaling $67,446.62 and prejudgment interest totaling $6,010.62, and each separately shall pay a civil money penalty of $25,000, for a total of $123,457.24 to the Securities and Exchange

---

person is engaged in the business of effecting transactions in securities, transaction-based compensation is not a necessary element to determine whether someone is a broker. Receipt of other forms of compensation in conjunction with regular participation in securities transactions may also indicate that a person is engaged in the business.

[7] A willful violation of the securities laws means merely "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)).

Commission. Payment of disgorgement and interest shall be made in accordance with the following schedule:

- Payment 1, each of Brickman and Baratto shall separately pay $12,500, in partial satisfaction of each one's civil money penalty, due within ten (10) days of the entry of this Order.
- Payment 2, each of Brickman and Baratto shall separately pay $4,295.22, in partial satisfaction of each one's civil money penalty, due within ten (30) days of the entry of this Order.
- Payment 3, each of Brickman and Baratto shall separately pay $4,102.39, in partial satisfaction of each one's civil money penalty, due within sixty (60) days of the entry of this Order.
- Payment 4, each of Brickman and Baratto shall separately pay $4,102.39, in partial satisfaction of each one's civil money penalty, due within ninety (90) days of the entry of this Order.
- Payment 5, in the amount of $8,161.96, due within one hundred twenty (120) days of the entry of this Order.
- Payment 6, in the amount of $8,161.91, due within one hundred fifty (150) days of the entry of this Order.
- Payment 7, in the amount of $8,161.91, due within one hundred eighty (180) days of the entry of this Order.
- Payment 8, in the amount of $8,161.91, due within two hundred ten (210) days of the entry of this Order.
- Payment 9, in the amount of $8,161.91, due within two hundred forty (240) days of the entry of this Order.
- Payment 10, in the amount of $8,161.91, due within two hundred seventy (270) days of the entry of this Order.
- Payment 11, in the amount of $8,161.91, due within three hundred (300) days of the entry of this Order.
- Payment 12, in the amount of $8,161.91, due within three hundred thirty (330) days of the entry of this Order.
- Payment 13, in the amount of $8,161.91, due within three hundred sixty (360) days of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, plus any additional interest accrued pursuant to SEC Rule of Practice 600, shall be due and payable immediately, without further application. 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;[8]

[8] The minimum threshold for transmission of payment electronically is $1,000,000. For amounts below the threshold, respondents must make payments pursuant to option (2) or (3) above.

(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 Mark G. Brickman and Mark E. Baratto as Respondents 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 Antonia Chion, Associate Director, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-5720.

V.

It is further Ordered that, solely for the 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.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75117 / June 5, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16378

In the Matter of MOUNTAIN SHARE TRANSFER, LLC and ERIK STERLING NELSON	EXTENSION ORDER

On February 6, 2015, we issued an Order accepting an offer from Mountain Share Transfer, LLC, to settle administrative proceedings, which alleged, among other things, that Mountain Share "failed to comply with various transfer agent registration, record-keeping and other provisions of the Securities Exchange Act of 1934 . . . and rules promulgated thereunder."[1] The Order required that Mountain Share comply with certain undertakings, including that it undertake to retain an Independent Consultant to review and recommend corrective measures concerning certain of its policies and procedures.[2] The Order also required, among other things, that Mountain Share (i) submit to the Commission's staff, within 120 days after the Order, "a written report that [it] will obtain from the Independent Consultant regarding [its] policies and procedures"; and (ii) advise the Independent Consultant and the Commission's staff, within 150 days after the Order, whether it considers any of the Independent Consultant's recommendations to be "unnecessary or inappropriate." The current deadline for the written report is Saturday, June 6, and the current deadline for Mountain Share to advise of any recommendations it considers "unnecessary or inappropriate" is Monday, July 6. Mountain Share now requests that we extend the first deadline by thirty days and the second deadline by fifteen days.

---

1 *Mountain Share Transfer, LLC*, Exchange Act Release No. 74226, 2015 WL 500131, at *1 (Feb. 6, 2015). Mountain Share is a Georgia-based transfer agent registered with the Commission.

2 In particular, these measures pertain to Mountain Share's "policies and procedures relating to the making, keeping and filing of Forms TA-1 and Forms TA-2 with the Commission, as well as its record keeping requirements, its obligation to establish and maintain written policies, and its fingerprinting requirements." *Mountain Share Transfer, LLC*, 2015 WL 500131, at *5.

In support of its extension request, Mountain Share states that it is unable to submit the Independent Consultant's written report by the deadline because its consultant has not yet completed the report for unexpected and significant personal reasons beyond his control. The Division of Enforcement does not oppose Mountain Share's request. Under the circumstances, it appears appropriate to grant the request.

Accordingly, it is ORDERED that the time, under Paragraph 24 of the Order, for Mountain Share to submit to the Commission's staff a written report from its Independent Consultant shall be extended by thirty days to July 6, 2015; and it is

FURTHER ORDERED that the time, under Paragraph 25 of the Order, for Mountain Share to advise the Independent Consultant and the Commission's staff whether it considers any of the Independent Consultant's recommendations to be "unnecessary or inappropriate" shall be extended by fifteen days to July 21, 2015.

By the Commission.

Brent J. Fields
Secretary

Lynn M. Powalski

By: Lynn M. Powalski
Deputy Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4105 / June 8, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16578

In the Matter of **LAWRENCE J. HERZING, CPA** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND RULE 102(e)(2) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Lawrence J. Herzing, CPA ("Respondent" or "Herzing"). The Commission also deems it appropriate to issue an order of forthwith suspension of Respondent pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.102(e)(2)].[1]

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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2. below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Rule 102(e)(2) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

[1] Rule 102(e)(2) provides in relevant part, "any . . . person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission."

III.

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

1. From at least in or about August 2004 through in or about August 2013, Respondent was associated with Contrarian Capital Management, L.L.C. ("Contrarian") as controller. Contrarian, a limited liability company formed in Delaware on June 5, 1995 with its principal place of business in Greenwich, Connecticut, is an investment adviser that has been registered with the Commission since December 15, 1995. Respondent became licensed as a Certified Public Accountant ("CPA") in New York on April 17, 1998.

2. On January 29, 2015, Respondent pled guilty in the United States District Court for the District of Connecticut to one count of violating 18 U.S.C. § 1343 (wire fraud) in a criminal action entitled *United States v. Lawrence J. Herzing*, Case No. 3:15-cr-00009-JAM.

3. In connection with his guilty plea, Respondent admitted, *inter alia*, that on at least thirty-two separate occasions beginning in or about August 2004 through in or about August 2013, he prepared false and fraudulent wire transfer instructions which purported to instruct J.P. Morgan Securities ("JPMS") to transfer money from the prime brokerage account of Contrarian Funds, L.L.C. (the "C Fund"), a special purpose entity that is a conduit for investments into and by various other entities managed by Contrarian, to recipients for legitimate business purposes, but in fact instructed JPMS to transfer money from the C Fund's account to accounts controlled by Herzing. Herzing admitted that, as part of his fraudulent scheme, he used false and fraudulent means to obtain necessary authorizing signatures from Contrarian's senior employees for the wire transfer instructions. Herzing admitted that he faxed the fraudulent wire transfer instructions by interstate wire to JPMS, with the effect of causing JPMS to electronically transfer money from the C Fund's account to accounts controlled by Herzing. Herzing admitted that, as a result of his fraudulent scheme, he caused the C Fund to sustain losses of approximately $9,202,417.54.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Herzing 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

In view of the foregoing, the Commission also finds that Respondent has been convicted of a felony within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is hereby ORDERED that Respondent Herzing is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75122 / June 8, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16579

In the Matter of **Guardian Zone Technology, Inc. (f/k/a Curtis Acquisition, Inc.), Heartland Wisconsin Corp., Klein Retail Centers, Inc., and LightFirst, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Guardian Zone Technology, Inc. (f/k/a Curtis Acquisition, Inc.), Heartland Wisconsin Corp., Klein Retail Centers, Inc., and LightFirst, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Guardian Zone Technology, Inc. (f/k/a Curtis Acquisition, Inc.) (CIK No. 1364831) is a Delaware corporation located in Chagrin Falls, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Guardian Zone is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2006, which reported a net loss of $3,700 for the prior nine months.

2. Heartland Wisconsin Corp. (CIK No. 1020234) is a Wisconsin corporation located in Milwaukee, Wisconsin with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Heartland is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended November 30, 1998, which reported a net loss of $61,335 for the prior nine months.

3. Klein Retail Centers, Inc. (CIK No. 1457291) is a void Delaware corporation located in Angola, Indiana with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Klein Retail is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 8-A registration statement on February 8, 2011.

4. LightFirst, Inc. (CIK No. 1255145) is a void Delaware corporation located in Elk Grove Village, Illinois with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LightFirst is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2004, which reported a net loss of over $1.69 million for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating
Commissioner Piwowar
Dissented as to
Municipal Advisor
and NRSRO Bars

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75127 / June 9, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4109 / June 9, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16584

In the Matter of **REBECCA L. ENGLE,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Rebecca L. Engle ("Engle" 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, Respondent admits the Commission's jurisdiction over her and the subject matter of these proceedings and the findings contained in Section III.2 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. From September 2002 to May 2006, Engle was associated with a registered broker-dealer and state-registered investment adviser. Engle, age 61, is a resident of Green Valley, Arizona.

2. On May 12, 2011, Engle pled no contest to two counts of securities fraud in violation of Neb. Rev. Stat. § 8-1102, a felony, before the County Court, Otoe County, Nebraska, in State of Nebraska v. Rebecca L. Engle, No. CR-09-38. On August 16, 2011, a judgment in the criminal case was entered against Engle. Engle was sentenced to serve between three and six years of incarceration.

3. The securities fraud counts to which Engle pled guilty alleged that between March 2005 and May 2005, Engle, in connection with the offer or sale of securities, to wit: promissory notes, directly or indirectly, employed a device, scheme, or artifice to defraud; or made an untrue statement of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in an act, practice or course of business which did operate or would operate as a fraud or deceit upon a person.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Engle be, and hereby is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

Pursuant to Section 15(b)(6) of the Exchange Act that Respondent Engle be, and hereby is 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the

Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75126 / June 9, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4108 / June 9, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16583

In the Matter of

CLINTON D. FRALEY,

Respondent.

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

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Clinton D. Fraley ("Fraley" 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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. From April 2011 to September 2011, Fraley was associated with a registered broker-dealer and investment adviser. Fraley, age 38, is a resident of Cañon City, Colorado.

2. On July 29, 2013, Fraley pled guilty to one count of securities fraud in violation of Colo. Rev. Stat. § 11-51-501(1)(b), a felony, before the District Court, Arapahoe County, Colorado, in State of Colorado v. Clinton D. Fraley, No. 2013CR465. On September 12, 2013, a judgment in the criminal case was entered against Fraley. Fraley was sentenced to serve 12 years of incarceration and ordered to pay restitution in the amount of $617,710.00.

3. The securities fraud count to which Fraley pled guilty alleged that between June 2011 and August 2012, Fraley, in connection with the offer or sale of a security, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Fraley be, and hereby is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

Pursuant to Section 15(b)(6) of the Exchange Act that Respondent Fraley be, and hereby is 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the

Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher Not participating
Commissioner Piwowar Dissented as to Municipal Advisor and NRSRO Bars

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75125 / June 9, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4107 / June 9, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16582

In the Matter of **DEVON J. CARLSON,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against DeVon J. Carlson ("Carlson" 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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. From March 1997 to May 2007, Carlson was associated with a registered broker-dealer and investment adviser. Carlson, age 55, is a resident of Shawnee, Kansas.

2. On October 7, 2010, Carlson pled guilty to two counts of securities fraud in violation of K.S.A. § 17-12a501(3), a felony, two counts of forgery in violation of K.S.A. § 21-3710, a felony, and two counts of theft in violation of K.S.A. § 21-3701, a felony, before the District Court, Johnson County, Kansas, in State of Kansas v. DeVon J. Carlson, Case No. 10CR1847. On February 16, 2011, a judgment in the criminal case was entered against Carlson. Carlson was sentenced to serve 32 months of incarceration and ordered to pay restitution in the amount of $231,078.14.

3. The securities fraud counts to which Carlson pled guilty alleged that between February 2007 and May 2007, Carlson unlawfully, feloniously, and intentionally, in connection with the sale of a security, directly or indirectly, did engage in a course of business that operated as a fraud. The forgery counts to which Carlson pled guilty alleged that between November 2005 and October 2006, Carlson unlawfully and feloniously, knowingly and with intent to defraud, did make, alter, or endorse a written instrument without authority to do so. The theft counts to which Carlson plead guilty alleged that between October 2006 and January 2007, Carlson unlawfully and feloniously, with intent to deprive individuals permanently of the possession, use, or benefit of their property, did obtain unauthorized control over property with a value of at least $1,000 but less than $25,000.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Carlson be, and hereby is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

Pursuant to Section 15(b)(6) of the Exchange Act that Respondent Carlson be, and hereby is 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75124 / June 9, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16581

In the Matter of

ROBERT H. MEDHUS,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Robert H. Medhus ("Medhus" 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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. From February 1986 to November 2011, Medhus was associated with a registered broker-dealer. Medhus, age 67, is a resident of Jamestown, North Dakota.

2. On August 5, 2013, Medhus pled guilty to 13 counts of securities fraud in violation of N.D.C.C. §§ 10-04-12(2)(c), 10-04-18, and 12.1-32-01(3), a felony, two counts of theft in violation of N.D.C.C. §§ 12.1-23-02(1), 12.1-23-05(1), and 12.1-32-01(3), a felony, and one count of unlawfully selling unregistered securities in violation of N.D.C.C. §§ 10-04-04, 10-04-18, and 12.1-32-01(3), a felony, before the District Court, Cass County, North Dakota, in State of North Dakota v. Robert Henry Medhus, Case No. 09-2012-CR-04741. On August 5, 2013, a judgment in the criminal case was entered against Medhus. Medhus was sentenced to serve ten years of incarceration.

3. The securities fraud counts to which Medhus pled guilty alleged that between March 2008 and January 2013, Medhus, in connection with the sale of securities, employed a scheme or course to defraud investors, which included, among other things, providing false account statements and tax documents, and secretly converting investor funds for his own use. The theft counts to which Medhus pled guilty alleged that between January 2007 and July 2012, Medhus, with the intent to deprive certain individuals, knowingly exercised unauthorized control over money belonging to them. The count of unlawfully selling unregistered securities to which Medhus pled guilty alleged that between March 2008 and January 2013, Medhus willfully sold unregistered securities that were required to be registered under N.D.C.C. Chapter 10-04.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Medhus be, and hereby is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

Pursuant to Section 15(b)(6) of the Exchange Act that Respondent Medhus be, and hereby is 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the

Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75129 / June 9, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16586

In the Matter of

JASON MATTHEW PENNINGTON,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Jason Matthew Pennington ("Pennington" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

From April 2000 to June 2010, Pennington was associated with a registered broker-dealer. Pennington, age 43, is a resident of El Reno, Oklahoma.

B. RESPONDENT'S CRIMINAL CONVICTION

1. On August 5, 2014, Pennington pled guilty to, among other things, a count of wire fraud in violation of 18 U.S.C. §§ 1343 and 1349, a felony, before the United States District Court, District of Kansas, in U.S. v. Jason Matthew Pennington, Case No. 13-10031-01-JTM. On January 12, 2015, a judgment in the criminal case was entered against Pennington. Pennington was sentenced to serve 42 months of incarceration.

2. In his plea agreement, Pennington agreed that in September 2009, he forged a request to a life insurance company to withdraw $278,250 on a policy owned by another individual and then obtained control over those funds.

3. During the time period of the misconduct for which he was convicted, Pennington was associated with a broker-dealer registered with the Commission.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4106 / June 9, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16580

In the Matter of Frederic Elm f/k/a Frederic Elmaleh, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Frederic Elm f/k/a Frederic Elmaleh ("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 and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

A. RESPONDENT

1. From no later than November 2013 through January 2015, Respondent controlled and managed three private investment funds: Elm Tree Investment Fund LP, Elm Tree 'e'Conomy Fund LP, and Elm Tree Motion Opportunity LP (collectively, the "Funds"). Respondent, through his company, Elm Tree Investment Advisors LLC, acted as the unregistered investment adviser to the Funds during the relevant period, maintaining control over their investment portfolios and making all final investment decisions on the Funds' behalf. He received compensation both through fees for his advisory services and through the unauthorized use of money from the Funds. Respondent, age 45, resides in Fort Lauderdale, Florida.

B. ENTRY OF THE INJUNCTION

2. On March 25, 2015, a judgment by consent was entered against Respondent in the civil action entitled *Securities and Exchange Commission v. Frederic Elm f/k/a Frederic Elmaleh, et al.*, Civil Action Number 15-cv-60082-DIMITROULEAS/SNOW in the United States District Court for the Southern District of Florida, which, among other things, permanently enjoined Respondent from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §77q(a); Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5; and Sections 206(1), 206(2), and 206(4) and Rules 206(4)-8(a)(1) and 206(4)-8(a)(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(4), and 17 C.F.R. §§ 275.206(4)-8(a)(1) and (a)(2).

3. The Commission's complaint alleged that from no later than November 2013 through January 2015, Respondent committed fraud by soliciting individuals to invest in the Funds through the purchase of limited partnership interests and through promissory notes on the representations that (i) the Funds would use the money to trade in equities and internet ventures, and (ii) Respondent would take a 2% management fee plus 20% of the profits the Funds earned. In fact, as alleged in the complaint, Respondent invested only a portion of the money raised, most of which he lost through trading. The complaint alleged that at no point, however, did the Funds return a profit that would have entitled Respondent to the additional 20% of the earnings. Instead, as alleged in the complaint, Respondent prepared false account statements and used the majority of the money raised to pay back investors with Ponzi-like payments and for his own personal use. Indeed, the Commission alleged as of the filing of the complaint, Respondent used without authority at least $2 million in investor funds to pay for personal expenses, which sums far exceeded the 2% management fee Respondent told investors the Funds would charge.

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, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating
Commissioner Piwowar
Dissented as to
Municipal Advisor
and NRSRO Bars

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75128 / June 9, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4110 / June 9, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16585

In the Matter of **BRIAN J. SCHUSTER,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Brian J. Schuster ("Schuster" 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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. From September 2002 to March 2006, Schuster was associated with a registered broker-dealer and state-registered investment adviser. Schuster, age 41, is a resident of Ashland, Nebraska.

2. On May 17, 2011, Schuster pled no contest to four counts of securities fraud in violation of Neb. Rev. Stat. § 8-1102, a felony, before the County Court, Oteo County, Nebraska, in State of Nebraska v. Brian J. Schuster, No. CR-09-37. On August 16, 2011, a judgment in the criminal case was entered against Schuster. Schuster was sentenced to serve between 80 months and 16 years of incarceration.

3. The securities fraud counts to which Schuster pled guilty alleged that between December 2005 and March 2006, Schuster, in connection with the offer or sale of securities, to wit: promissory notes, indirectly omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Schuster be, and hereby is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

Pursuant to Section 15(b)(6) of the Exchange Act that Respondent Schuster be, and hereby is 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the

Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 75135 / June 9, 2015

Admin. Proc. File No. 3-16497

In the Matter of R. SCOTT PEDEN, ESQ.	ORDER DENYING MOTION TO LIFT TEMPORARY SUSPENSION AND DIRECTING HEARING

R. Scott Peden, Esq., petitions us, pursuant to Rule 102(e)(3)(ii) of the Commission's Rules of Practice, to lift his temporary suspension from appearing or practicing before the Commission as an attorney.[1] For the reasons set forth below, we deny the petition and set the matter down for a hearing before an administrative law judge.

On January 3, 2012, the Commission filed a complaint against Peden and others in district court alleging, among other things, that Peden, who was General Counsel and Secretary of Life Partners Holdings, Inc. ("LPHI"), a publicly traded financial services company, aided and abetted the violation of Section 13(a) of the Securities Exchange Act of 1934 and Rules 12b-20, 13a-1, and 13a-13 thereunder.[2] Specifically, the complaint alleged that Peden knowingly aided and abetted the submission of numerous false or misleading statements in LPHI's filings with the Commission. Those filings materially misstated LPHI's net income from fiscal year 2006 through the third quarter of fiscal year 2011 by prematurely recognizing revenues and understating impairment expenses related to LPHI's investments in fractional interests of life insurance policies in the secondary market known as "life settlements."

---

1 17 C.F.R. § 102(e)(3)(ii) (providing that "[a]ny person temporarily suspended from appearing and practicing before the Commission . . . may, within 30 days after service upon him or her of the order of temporary suspension, petition the Commission to lift the temporary suspension").

2 *SEC v. Life Partners Holdings, Inc., et al.*, No. 1:12-cv-00033-JRN-AWA (W.D. Tex. Jan. 3, 2012).

On January 16, 2015, the district court entered a final judgment that permanently enjoined Peden from violating the aforementioned provisions of the Exchange Act and ordered him to pay a $2 million civil penalty.[3]

On April 16, 2015, based on the permanent injunction, we instituted administrative proceedings pursuant to Rule 102(e)(3)(i)(A) and imposed a temporary suspension on Peden.[4] We found that a court of competent jurisdiction had permanently enjoined Peden, an attorney licensed to practice in Texas, from violating the federal securities laws.[5] In light of this finding, we deemed it "appropriate and in the public interest" that Peden be temporarily suspended from appearing or practicing before the Commission as an attorney.[6] We advised that the temporary suspension would become permanent unless Peden filed a petition seeking to lift it within thirty days after service of the April 16, 2015 order.

On May 13, 2015, Peden filed a petition to lift his temporary suspension. In the petition, he requested "a hearing on this matter and that, following such hearing, the Commission lift the temporary suspension and reinstate [his] ability to appear or practice before the Commission." The Office of the General Counsel filed an opposition in which it agreed that a hearing should be held but otherwise argued that the petition should be denied.

We have determined to deny Peden's petition. As previously discussed, in our April 16, 2015 order, we deemed it "appropriate and in the public interest" to temporarily suspend Peden. Peden has not provided, nor do we find, any basis to question or revisit that determination. A court of competent jurisdiction has permanently enjoined him from violating the securities laws. The findings made in the injunctive proceeding, which Peden is precluded from contesting here,[7] and the permanent injunction entered against him justify continuing the temporary suspension

---

3 *SEC v. Life Partners Holdings, Inc., et al.*, No. 1:12-cv-00033-JRN-AWA (W.D. Tex. Jan. 16, 2015).

4 *R. Scott Peden, Esq.*, Exchange Act Release No. 74752, 2015 WL 1732553 (Apr. 16, 2015). Rule 102(e)(3)(i)(A) provides that "[t]he Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney . . . who has been by name: (A) permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder." 17 C.F.R. § 201.102(e)(3)(i)(A).

5 *Peden,* 2015 WL 1732553, at *1.

6 *Id.*

7 *See* 17 C.F.R. § 201.102(e)(3)(iv) (stating that, in any hearing held on a petition filed in accordance with Rule 102(e)(3)(ii), the petitioner may not contest any findings made against him in the underlying proceeding).

pending a hearing to determine what, if any, remedial sanctions may be appropriate to protect the integrity of our processes.[8]

Accordingly, IT IS ORDERED that R. Scott Peden, Esq.'s petition to lift the temporary suspension is denied, and that the temporary suspension will remain in effect pending a hearing and decision in this matter; it is further

ORDERED that this proceeding be set down for a public hearing before an administrative law judge in accordance with Commission Rule of Practice 110. As specified in Rule of Practice 102(e)(3)(iii), the hearing shall be expedited in accordance with Rule of Practice 500; and it is further

ORDERED that the administrative law judge shall file an initial decision no later than 210 days from the date of service of this order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

---

[8] *See, e.g., Robert C. Weaver, Esq.*, Exchange Act Release No. 73949, 2014 WL 7366048, at *2 & n.10 (Dec. 29, 2014) (order denying motion to lift temporary suspension and setting matter down for hearing).

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4112 / June 9, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16367

In the Matter of **The ELIV Group, LLC and Scott Valente,** **Respondents.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTIONS 203(e) AND 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940**

I.

On February 3, 2015, the Securities and Exchange Commission ("Commission"), deeming it appropriate and in the public interest, instituted these public administrative proceedings pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against The ELIV Group, LLC ("ELIV") and Scott Valente ("Valente") (together, "Respondents").[1]

II.

Respondents have 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 them and the subject matter of these proceedings and the findings contained in Section III.6 below, which are admitted, Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

---

1 See Investment Advisers Act Rel. No. 4013, February 3, 2015, Admin. Proc. File No. 3-16367.

III.

On the basis of this Order and Respondents' Offer, the Commission finds that:

1. Valente was the founder, manager, owner and sole investment professional of ELIV, an investment advisory firm. Valente is 57 years old and is a resident of East Greenbush, New York.

2. ELIV is a limited liability company organized under the laws of New York in November 2010. ELIV's principal place of business is in Albany, New York, and it also maintains an office in Warwick, New York. ELIV is not registered in any capacity with the Commission, FINRA, or any other self-regulatory organization.

3. On June 3, 2014, the Commission filed a Complaint against Respondents in the United States District Court for the Southern District of New York (the "District Court"), in a civil action entitled Securities and Exchange Commission v. Scott Valente and The ELIV Group, LLC, Civil Action Number 14 Civ. 3974 (VLB) (JCM) (the "Civil Action"). The Commission's Complaint alleged that Respondents, since at least November 2010 through the filing of the complaint, fraudulently lured approximately eighty individual investors, largely in the Albany and Warwick, New York communities, to become advisory clients and invest more than $8.8 million with ELIV.

4. The Commission's Complaint further alleged that Respondents fraudulently solicited those investments by: (1) falsely claiming to prospective clients that ELIV achieved consistent and outsized, positive returns; (2) falsely assuring prospective clients that their principal was "guaranteed," backed by a large money market fund and fully liquid; (3) sending clients false monthly investment reports that reported inflated monthly returns, account values and assets under management; (4) falsely assuring prospective and existing clients that ELIV's books and records (including monthly statements) were audited; and (5) falsely misrepresenting that ELIV was qualified to and would open and manage IRA accounts for its clients. According to the Commission's Complaint, Respondents also falsely told the investing public that Valente had a 30-year record of investing experience "dedicated to the highest standards of service," and that he founded ELIV after leaving the "corporate financial industry" upon concluding there "had to be a better way for clients to achieve financial independence." But, the Commission's Complaint alleged, in reality, and not disclosed to investors, Valente is a former registered representative who had twice filed for bankruptcy, and who had founded ELIV after the Financial Industry Regulatory Authority permanently expelled him in 2009 from the broker-dealer industry.

5. The Commission's Complaint further alleged that, contrary to the inflated monthly returns that Respondents reported to clients in ELIV's investment reports, ELIV earned no positive returns, but rather sustained investment losses in each of the three full years ELIV existed, which amounted in total to $1.2 million. Further, the Commission's Complaint alleged that Valente secretly misappropriated at least $2.66 million of his clients' money, and spent the vast majority of

those sums on himself, including home improvements, mortgage payments, jewelry, a vacation condominium and substantial cash withdrawals.

6. On December 23, 2014, the District Court entered judgments in the Civil Action against ELIV and Valente on consent, permanently enjoining them from future violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(e) of the Advisers Act, that Respondent ELIV be, and hereby is CENSURED for violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

It is hereby FURTHER ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent Valente 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.

Any reapplication for association by the Respondent Valente 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent Valente, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9806 / June 11, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75144 / June 11, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16358

In the Matter of SPECTRUM CONCEPTS, LLC, DONALD JAMES WORSWICK, MICHAEL NICHOLAS GROSSO, and MICHAEL PATRICK BROWN, Respondents.	ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTIONS 8A OF THE SECURITIES ACT OF 1933 AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AGAINST RESPONDENTS SPECTRUM AND WORSWICK

I.

On January 23, 2015, the Securities and Exchange Commission ("Commission") instituted cease-and-desist proceedings against Spectrum Concepts, LLC ("Spectrum"), Donald James Worswick ("Worswick") (collectively "Settling Respondents"), Michael Nicholas Grosso ("Grosso") and Michael Patrick Brown ("Brown") (collectively "Respondents"), pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and 21C of the Securities Exchange Act of 1934 ("Exchange Act"). Settling Respondents have submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept.

II.

Solely for the purpose of settling 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, Settling Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant To Sections 8A of the Securities Exchange Act of 1933 and Section 21C of the Securities and Exchange Act of 1934 Against Respondents Spectrum and Worswick ("Order"), as set forth below.

III.

On the basis of this Order and Settling Respondents' Offer, the Commission finds[1] that:

SUMMARY

1. This matter concerns a prime bank scheme conducted through Spectrum by Worswick, its president and owner, and others.

2. Between approximately May 2012 and October 2012 (the "Offering Period"), Worswick, acting through Spectrum, offered and sold to at least five elderly investors $465,000 of investments in what he called "Private Joint Venture Credit Enhancement Agreements" ("Enhancement Agreements").

3. The Enhancement Agreements represented to investors that investor funds would be placed by Spectrum in "private funding projects" and used to "set up" a "credit facility" and something called a "trade slot" that would then be "blocked" for the benefit of a supposed "trade platform." In selling Enhancement Agreements, Worswick and others told investors that, by investing in an Enhancement Agreement, the investors, along with Spectrum, would earn returns ranging from 900% in 20 days to 4,627% annually. The investments were fictitious.

4. Worswick signed each Enhancement Agreement on behalf of Spectrum in exchange for receiving investor funds. At least four of the Enhancement Agreements also included the representation that the investor would receive a full return of his or her principal investment after a specified number of days, but the investor would continue nonetheless to receive a steady stream of promised returns.

5. Worswick's scheme was a blatant fraud. The supposed "private funding projects," "credit facilit[ies]," and "trade slot[s]" described in the Enhancement Agreements did not exist, and none of the funds Worswick obtained from investors was used for the investors' benefit. Moreover, none of the investors has received a return of their principal.

6. Of the $465,000 of investor funds raised, two investors were subsequently able to obtain a return of $265,000 when they had second thoughts about the investments. However, most of the remainder of $200,000 was misappropriated by Worswick for his own purposes. Among other things, he spent a portion of this amount on living expenses and paid other portions to a variety of people, including another respondent, who received $27,500.

---

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

SETTLING RESPONDENTS

7. Spectrum is a Florida limited liability company that Worswick created in January 2010 for the supposed purpose of sponsoring and promoting concerts. However, other than the investor funds which Spectrum received into its bank account, Spectrum has never had any corporate assets or business operations, and has served only as a vehicle for Worswick's fraud. Spectrum has never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act.

8. Worswick is 64 years of age and a resident of Eustis, Florida. He is president and owner of Spectrum.

OTHER RESPONDENTS

9. Grosso is 60 years of age and a resident of Rocky Point, New York. During the Offering Period, Grosso was not an employee or officer of Spectrum.

10. Brown is 47 years old and a resident of Boca Raton, Florida. In 2004, Brown was charged by the Commission with violations of Section 10(b) of the Exchange Act and Rule 10b-5, thereunder. In 2005, Brown settled those charges by consenting to a Court order enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5, thereunder, and barring him for a period of two years from participating in the offering of a penny stock.

BACKGROUND

11. After forming Spectrum, Worswick began looking for ways to raise money in order to fund Spectrum's concert promotion business. To this end, he explored various "investment programs" advertised on the internet as a means to earn a return that he could use for Spectrum's business. Through his efforts, Worswick met Brown who presented himself as an attorney with years of experience with such investment programs. In fact, Brown has never been licensed as an attorney by any state. Worswick hired Brown to draft the Enhancement Agreements for Spectrum that Worswick, Grosso, and Brown subsequently offered and sold to investors. Through the sale of Enhancement Agreements, Worswick and Brown hoped to raise upwards of $15 million for Spectrum from investors.

12. Shortly after Worswick hired Brown, Worswick met Grosso and elicited his help in recruiting investors to invest in Enhancement Agreements.

THE OFFERING

13. Between approximately May 2012 and October 2012, Spectrum offered and sold $465,000 of Enhancement Agreements to at least five investors. Brown drafted the language of the Enhancement Agreements, as well as other documents presented, or intended to be presented, to investors as part of the offering. These included: (i) a Board Resolution; (ii) an Origin and History of Funds; (iii) an Authorization to Verify Funds; (iv) a Letter of Intent; (v) a Letter of Request for Information and Non-Solicitation; (vi) an Investor Letter; and (vii) a Client Information Form.

Brown also communicated with investors directly (or indirectly through one or more of the Finders) if investors had questions or wanted more information about the offering.

14. Worswick and Grosso reviewed, edited, and disseminated to investors the documents created by Brown, and also themselves solicited investors. Additionally, Grosso posted information about the offering on a classified advertisement website in order to attract investors broadly. To further facilitate the fraud, Worswick provided Brown and Grosso with access to Spectrum's letterhead for use in communicating with investors and drafting documents. Moreover, Worswick allowed Spectrum's bank account to be used for receipt of investor funds, and Worswick signed the documents related to each investment, including the Enhancement Agreements, on behalf of Spectrum.

15. With the final three investors, Grosso and Worswick also made some revisions to the Enhancement Agreements drafted by Brown.

16. With regards to early investors in the program, Worswick or Grosso informed Brown of an expressed interest by a prospective investor. Worswick or others also asked the investor to complete and sign various forms, whose purpose was portrayed as verifying that an investor had the financial resources to invest. After an investor completed and signed the forms, he or she was allowed to discuss his or her potential investment with Brown. When an investor decided to invest, Brown, Grosso, or Worswick finalized an Enhancement Agreement for that particular investor and provided it to the investor to sign.

17. To add legitimacy to the offering, Worswick arranged for an escrow agent to receive funds from the investors and then release the funds to Spectrum at the direction of the investors once Spectrum had met certain pre-conditions. These pre-conditions included the creation of the "trade slot" or "credit facility," which Worswick or others would tell the investors had occurred or, in the case of two investors, the provision of a "financial guarantee" from an insurance company, insuring the investors against the loss of their principal. In actuality, the use of an escrow agent provided a façade of legitimacy. Investors in the Enhancement Agreements had no means to verify independently whether Spectrum had created the "trade slot" or "credit facility," as represented. Moreover, the financial guarantee provided to two investors in was fictitious.

18. The escrow agreement also gave the escrow agent responsibility for receiving profits from the trade platform and disbursing those profits to the investors.

19. The Enhancement Agreements only vaguely described how investor funds would be used. According to their terms, Spectrum would establish a credit facility and trade slot "approximately 7 banking days" after it received investor funds from escrow. Afterwards, the credit facility and trade slot would be "blocked for the benefit of a trade platform." The Enhancement Agreements further represented that the trade platform would begin making profit payments to the escrow attorney within 30 banking days of the trade platform being blocked, and that the escrow agent would disperse profit payments to investors within one business day of the escrow agent receiving them. In addition, Spectrum itself would somehow participate in the investment with the investors and share in the profits accordingly.

20. The Enhancement Agreements, signed by Worswick, varied. At least one agreement represented that the return of the initial investment would occur immediately after the supposed line of credit was established or within 15 days prior to the trade platform being entered. At least two Enhancement Agreements promised that the respective investor would be paid $100,000 per week for 52 weeks for a total of $5.2 million—a return of 4,627% return on the investments.

21. At least two Enhancement Agreements also stated that Spectrum was required to provide a financial guarantee of the investors' principal from a particular insurance company. The Enhancement Agreement further specified that no escrowed funds could be released by the escrow agent until such a financial guarantee was provided. On June 18, 2012, Spectrum provided the investors with a financial guarantee, signed by Worswick, and purportedly backed by this particular insurance company. In a June 18, 2012 email, Brown communicated through an intermediary to one of the investors that the "policy will be effective tomorrow . . . and must be signed by [the investor] and Mr. Worswick and sent back to [Brown]." Brown added that the investor needed to release the funds from the escrow agent so that the policy premium could be paid. In fact, the financial guarantee provided by Spectrum was fictitious.

22. In August 2012, Spectrum obtained investments of $50,000 each from two additional investors. The investors each signed Enhancement Agreements, dated August 2, 2012 and August 6, 2012, respectively, that were essentially identical to the earlier versions used by Spectrum. Worswick signed the Enhancement Agreements on behalf of Spectrum. Each of these Enhancement Agreements acknowledged receipt of $50,000 of investor funds and promised in return that the investor would receive profit payments of $50,000 a month for 12 months for a total of $600,000 for each investor. This represented an 1100% return on each investment. Additionally, each investor was promised a return of their initial investment thirty days after the trade platform was entered.

23. On August 6 and 7, 2012, the new investors signed letters authorizing the escrow agent to release their respective funds to Spectrum. Spectrum's bank records show that Spectrum received the $100,000 into its bank account on August 14, 2012. The next day, on August 15, 2012, without knowledge of the new investors, Worswick transferred $20,000 of these funds to an individual who had located other investors.

24. One of the investors received a single page letter from Spectrum, addressed to "Dear Client" with the typed name of "Mike Grosso" at the bottom, describing a supposed "Standby Letter of Credit" ("SBLC") in which the investor was supposed to be investing (hereafter, the "Dear Client letter"). The Dear Client letter described in detail how Spectrum works with a "Credit Facility" to use a "Proof of Funds" to leverage a bank instrument which then goes through a "monetizing" process.

25. In early September 2012, Spectrum obtained an investment of $100,000 from another investor (who invested through an entity the investor controlled). The investor was introduced to Spectrum by an intermediary, and was recruited to invest by Grosso. Grosso represented himself to the investor as an agent or representative of Spectrum.

26. Grosso offered the investor the opportunity to purchase an interest in a SBLC that was supposed to be purchased by Advance Funding Group ("AFG") from a European bank. Grosso told the investor that this SBLC would cost $200,000 in total, but that the investor would only need to invest $100,000 since Grosso had identified two other individuals who together would invest the remaining $100,000. Grosso further told the investor that AFG would use the invested funds to purchase the SBLC and, thereafter, transfer the SBLC to another entity that would then somehow "monetize" the SBLC by investing the proceeds in long-term investments. Grosso provided the investor with the same Dear Client letter referenced above, and gave the investor the documents to sign to make the investment, including the Enhancement Agreement and the escrow agreement. Grosso represented to the investor that the investment would yield a total return of $6.5 million.

27. Based on Grosso's representations, the investor signed an Enhancement Agreement with Spectrum on September 10, 2012 and, thereafter, authorized the escrow agent to release the investor's funds to Spectrum. Worswick signed the Enhancement Agreement on behalf of Spectrum. While the language of this Enhancement Agreement was substantially similar to the terms of the earlier Enhancement Agreements, there were notable differences. For instance, for a $100,000 investment, Spectrum promised the investor a profit of $1 million in 20 banking days, a return of 900%, after Spectrum supposedly received "its anticipated profit payment." Also, the Enhancement Agreement actually referenced a SBLC. In any event, Grosso promised the investment return no later than 20 days after November 19, 2012, the date on which Grosso claimed the SBLC would be "monetized."

28. The investment programs described to the investors by the Respondents were fictitious. Contrary to the representations to investors, Worswick largely diverted for his own purposes the investor funds Spectrum received. Between August 2012 and December 2012, Spectrum received into its bank account $245,000 of investor proceeds from the sale of Enhancement Agreements, from which Worswick returned $45,000 to an investor. Starting on August 15, 2012, after receiving $100,000 in later investments, Worswick made four payments to Grosso totaling $27,500. Also on August 15, 2012, Worswick wired $20,000 to an intermediary who had found earlier investors, as described above. Worswick also paid Brown a total of between $15,000 and $20,000.

29. Worswick also used Spectrum funds received from investors for expenses of his own. For instance, Worswick wired $30,000 to his personal attorney, withdrew approximately $6,400 in cash, and transferred $17,000 to another bank account he controlled. He also wrote checks totaling approximately $8,769, and paid $2,701, for personal expenses such as purchases made at convenient stores or on the internet for diet items.

30. As a result of the conduct described above, Settling Respondents committed violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5, thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

31. As a result of the conduct described above, Settling Respondents committed violations of Sections 5(a) and 5(c) of the Securities Act, which prohibit, absent an exemption, any person, directly or indirectly, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell a security for which a registration statement is not in effect or to offer to sell a security for which a registration statement has not been filed.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the Settling Respondents' Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and 21C of the Exchange Act, Respondent Spectrum cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5, thereunder.

B. Pursuant to Section 8A of the Securities Act and 21C of the Exchange Act, Respondent Worswick cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5, thereunder.

C. Worswick shall, within 60 days of the entry of this Order, pay disgorgement of $166,500 and prejudgment interest of $12,452.72 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury subject to Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

D. Worswick shall, within 60 days of the entry of this Order, pay a civil money penalty in the amount of $120,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund ("Fair Fund distribution") pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

(1) Worswick may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Worswick 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) Worswick may pay by certified check, bank cashier's check, or United States postal money orders, made payable to the Securities and Exchange Commission and hand-deliver or mail to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order for the disgorgement and prejudgment interest and for the civil penalty must be accompanied by a cover letter identifying Spectrum and Worswick as Respondents 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 Edward G. Sullivan, Senior Trial Counsel, Division of Enforcement, 950 East Paces Ferry Road, N.E., Suite 900, Atlanta, Georgia 30326.

E. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, amounts ordered to be 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 Worswick 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 Worswick'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 Worswick 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 Worswick 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 Settling Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Settling Respondents 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 Settling Respondents 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.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75157; File No. 10-214)

June 11, 2015

Automated Matching Systems Exchange, LLC; Order Denying an Application for a Limited Volume Exemption from Registration as a National Securities Exchange Under Section 5 of the Securities Exchange Act of 1934

I. Introduction

Automated Matching Systems Exchange, LLC ("AMSE") believes that its proposed business model would qualify it as an exchange. As defined in Section 3(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"), an "exchange" is "any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange."[1] Under Section 5 of the Act, it is unlawful for an exchange to effect any transaction in a security, or to report such transaction, "unless such exchange (1) is registered as a national securities exchange ... or (2) is exempted from such registration upon application by the exchange because, in the opinion of the

[1] 15 U.S.C. 78c(a)(1). Rule 3b-16 under the Act further provides that:

> "[a]n organization, association, or group of persons shall be considered to constitute, maintain, or provide 'a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,' as those terms are used in Section 3(a)(1) of the Act, (15 U.S.C. 78c(a)(1)), if such organization, association, or group of persons: (1) Brings together the orders for securities of multiple buyers and sellers; and (2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade."

17 CFR 240.3b-16(a).

Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration."[2]

AMSE has chosen the latter option, seeking from the Commission an exemption from registration as a national securities exchange.[3] After a careful review of the exemption application, however, we have determined to deny it.

Although our review leads us to identify a number of potential issues that might warrant this result (including whether AMSE would even qualify as an exchange),[4] we find that the application is fatally flawed because AMSE is proposing to possess the broad regulatory powers and responsibilities that are reserved for self-regulatory organizations ("SROs"), while simultaneously seeking exemption from registration as an exchange.[5] Under the Act, for an exchange to possess the powers and responsibilities of an SRO, it must register as a national securities exchange. An exchange that is exempt from such registration does not meet the

---

2 15 U.S.C. 78e.

3 We note that, in a December 2014 public notice, the Commission expressly stated that it understood AMSE to be seeking an exemption under Section 5—not registration—and that AMSE did not respond otherwise. See Securities Exchange Act Release No. 73911 (December 22, 2014), 79 FR 78507, note 1 (December 30, 2014) ("Amendment Notice") ("The Commission notes that AMSE's application only seeks a limited volume exemption under Section 5 of the Exchange Act from registration as a national securities exchange under Section 6 of the Exchange Act. AMSE's application does not seek to register as a national securities exchange."). We therefore deem any claim to the contrary waived.

4 See infra Section III.A.

5 SROs are privately-funded entities, entrusted with quasi-governmental authority, which generally adopt rules to govern their members and enforce these rules as well as the federal securities laws. See generally Free Enterprise Fund v. Public Co. Accounting Oversight Bd., 561 U.S. 477, 484 (2010) (explaining that "private self-regulatory organizations in the securities industry—such as the New York Stock Exchange—… investigate and discipline their own members subject to Commission oversight"). The quasi-governmental authority afforded to SROs includes prosecutorial, adjudicatory, and rulemaking authority.

definition of an SRO under the Act. Moreover, the Commission has never allowed an exempt exchange to possess the broad range of regulatory powers and responsibilities of an SRO. We believe that doing so here would be contrary to the Act and inconsistent with the public interest and the protection of investors.

II. Background

A. Procedural History

On July 7, 2014, AMSE filed with the Commission an application seeking a limited volume exemption, under Section 5 of the Act, from the requirement to register as a national securities exchange under Section 6 of the Act.[6] Notice of AMSE's exemption application was published for comment in the Federal Register on July 29, 2014.[7]

---

6 In the interest of completeness, we note the events that preceded AMSE's filing of its July 7th application. From December 2013 through March 2014, staff had numerous communications with AMSE about its (then-draft) application, including multiple email exchanges and at least one phone call; during these exchanges, the staff explained that it was concerned that AMSE's proposed business model was not an "exchange." In March 2014, AMSE formally submitted a Form 1 application. On April 24, 2014, the staff returned AMSE's application because, based on its review, the staff believed that AMSE had erred in submitting an application for an exchange and instead should have submitted an application for a national securities association, a classification that the staff believed better fit with AMSE's proposed business model. On May 6, 2014, the staff had a phone call with AMSE in which the staff again explained its view that AMSE's proposed business model was not an exchange. On June 16, 2014, AMSE brought suit against the Commission in the U.S. District Court for the District of South Dakota seeking certain injunctive and declaratory relief in connection with its application. See AMSE v. SEC, Civ. 14-4095 (D.S.D.). On June 24, 2014, the Commission staff and AMSE reached an agreement pursuant to which AMSE would submit a new Form 1 application that would include certain additional information needed to complete the application and the staff would thereafter proceed to process the revised application for Commission consideration.

7 See Securities Exchange Act Release No. 72661 (July 23, 2014), 79 FR 44070.

On October 23, 2014, the Commission issued an order instituting proceedings to determine whether to grant or deny AMSE's exemption application.[8] In that order, the Commission explained that it "is concerned that AMSE's exemption application does not meet a key threshold requirement for being granted an exemption from exchange registration—namely, that the applicant actually be an 'exchange' as defined under Section 3(a)(1) of the Exchange Act and Rule 3b-16 thereunder."[9] The Commission specifically identified the fact that "it does not appear that any AMSE system would operate as an exchange by bringing together purchasers and sellers of securities."[10]

On November 10, 2014, AMSE submitted Amendment No. 1 to its exemption application. Notice of Amendment No. 1 to AMSE's exemption application was published for comment in the Federal Register on December 30, 2014.[11] In the notice, the Commission advised interested parties that it was considering potential "additional grounds for denial." As the Commission explained, "AMSE's exemption application states that AMSE would operate as a self-regulatory organization that would exercise self-regulatory authority over its members,"[12] but under the Act an exempt exchange is not an SRO; thus, "any attempts by AMSE to hold

8 See Securities Exchange Act Release No. 73419, 79 FR 64421 (October 29, 2014) ("Order Instituting Proceedings").

9 Id. at 64422.

10 Id.

11 See Amendment Notice, supra note 3. In Amendment No. 1, AMSE added language to Exhibit E that described proposed consolidated quotation systems and a proposed optional order router that could send orders between the distinct member-operated order books.

12 79 FR at 78508.

itself out as a self-regulatory organization while simultaneously seeking an exemption under Section 5 would be contrary to the Exchange Act."[13]

On February 11, 2015, AMSE submitted Amendment Nos. 2A and 2B, along with a comment letter.[14] Among other things, Amendments 2A and 2B changed most of the application's references to "self-regulatory organization" to "limited volume exempt regulatory organization."[15] Notwithstanding this change in nomenclature, AMSE did not otherwise modify the accompanying description of the powers and responsibilities it contemplated possessing. In some instances, AMSE continued to refer to itself in terms that pertain only to SROs under the Act or implied that it falls generally within the category of an SRO and would exercise authority as such.[16]

---

13 Id. On January 22, 2015, the Commission provided notice of an extension of the time for the conclusion of the proceedings to determine whether to grant or deny AMSE's exemption application. See Securities Exchange Act Release No. 74116 (January 22, 2015), 80 FR 4321 (January 27, 2015) ("Extension Notice"). The Extension Notice extended the time for the conclusion of the proceedings by 90 days, to April 24, 2015. Id. AMSE subsequently consented to an additional 60-day extension of the time for the conclusion of the proceedings to June 23, 2015. See Letter from Michael Stegawski, Chief Regulatory Officer, AMSE, to SEC staff, dated February 27, 2015 ("AMSE February 27 Letter").

14 See Letter from Michael Stegawski, Chief Regulatory Officer, AMSE, to SEC staff, dated February 8, 2015 ("AMSE February 8 Letter"). Attached to the AMSE February 8 Letter were five exhibits: Exhibit A – Amendment to Form 1 Application 2A, February 16, 2015 ("Amendment 2A"); Exhibit B - Amendment to Form 1 Application 2B, February 16, 2015 ("Amendment 2B"); Exhibit C – January 16, 2015 Correspondence – Paul G. Alvarez; Exhibit D – January 5, 2015 Correspondence – Michael Stegawski ("AMSE January 5 Letter"); Exhibit E – Discussion Draft – Form 1 Application, January 5, 2015.

15 See AMSE February 8 Letter. We note that Amendment Nos. 2A and 2B appear to present different business models. We find it unnecessary to analyze these proposed alternatives separately, however, because both involve the same fatal flaw concerning AMSE's proposal to exercise the panoply of self-regulatory powers and responsibilities. Further, we note that neither the Act, nor Form 1, nor the rules relating thereto provide for amendments in the alternative.

16 See infra notes 23-29 and accompanying text.

The Commission received thereafter one comment letter from 1st Trade opposing AMSE's exemption application,[17] to which AMSE subsequently submitted a response.[18]

B. AMSE's Proposed Regulatory Functions

In its exemption application, AMSE proposes that it would operate a marketplace for securities processing.[19] According to the application, persons seeking to buy or sell securities could only enter their orders through an AMSE member.[20] And pursuant to AMSE's proposed rules, any person may become a member of AMSE, provided that the person submits an application and complies with any conditions imposed by AMSE.[21] AMSE proposes a specific application form for broker-dealer firms to become its members.[22]

---

17 See Letter from Lori C. Sarian, Managing Partner, 1st Trade, to Kevin M. O'Neill, Deputy Secretary, Commission, dated April 14, 2015 ("1st Trade Letter"). This comment letter expresses concerns about an overall lack of clarity and detail in AMSE's application. This comment letter also raises concerns with respect to specific aspects of AMSE's application, citing, among other things, an ambiguity and vagueness surrounding membership qualifications and obligations, an unclear application process for certain potential members, proposed best execution obligations that may be inconsistent with industry standards, an inadequate description of operations and trade processing, inadequate issuer requirements, and the duplication of requirements for potential members who are already broker-dealers. Because the Commission's focus in this order is on threshold matters with respect to AMSE's application, many of 1st Trade's specific concerns are not addressed herein.

18 See Letter from Michael Stegawski, Chief Regulatory Officer, AMSE, to Kevin M. O'Neill, Deputy Secretary, Commission, dated April 22, 2015 ("AMSE Response Letter"). The AMSE Response Letter provides responses to each of 1st Trade's specific comments. See supra note 17.

19 See Amendment 2B, Exhibit E, Section A.

20 See Amendment 2B, Exhibit E, Section E. The definition of "participant" was added to the AMSE rules in Amendment 2B. Participant means "a Person who has entered into a contractual agreement with an Exchange Member for the purpose of effecting transactions in securities or submitting, disseminating, or displaying orders." See AMSE Rule 1.5(w). In addition, Amendment 2B replaced the term "customer" with "participant" throughout AMSE's rules and other Form 1 Exhibits. See, e.g., AMSE Rules Chapters III, IV, VI, VII, XI, and Amendment 2B, Exhibit E.

21 See AMSE Rule 2.3. Amendment 2B removed the requirement that AMSE members be registered broker-dealers. See Amendment No. 1, AMSE Rule 2.3. In addition,

Although AMSE's application seeks approval as an exempt exchange, its proposal reveals AMSE's aim to exist simultaneously as an SRO. Throughout its exemption application, AMSE refers to itself in terms that pertain only to SROs under the Act. For example, AMSE's exemption application refers to AMSE's rules being filed with the Commission under Section 19(b) of the Act,[23] which governs the filing of rules by SROs with the Commission.[24] AMSE's rules also state that its disciplinary decisions and access decisions would be subject to agency review under the Act,[25] where such review is available only for the activities of SROs under Section 19 of the Act.[26] AMSE's exemption application also repeatedly implies that it falls generally within the category of an SRO and that it would exercise authority as such.[27] AMSE also has stated in a comment letter that AMSE "will become a dedicated SRO for securities matching systems...."[28] Further, AMSE asserts that its members would hold a status under the Act that is only conferred on members of SROs.[29]

Amendment 2B removed the requirement that AMSE members comply with Regulation ATS. See Amendment No. 1, Rules 15.1 -15.5.

22 See Amendment 2B, Exhibit F and Rule 2.6(b).

23 See AMSE Rule 1.5(b).

24 See 15 U.S.C. 78s(b).

25 See AMSE Rules 8.14 and 9.7.

26 See 15 U.S.C. 78s(b), (d).

27 See, e.g., AMSE Rule 1.5(j) ("a self-regulatory organization, other than the Exchange...") and AMSE Rule 12.5 ("The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Act....Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities...").

28 See AMSE Response Letter at 10; see also id. at 9 (AMSE states that it "will exercise self-regulatory powers.").

29 See AMSE Rule 1.5(l) ("An Exchange Member shall have the status as provided in Section 3(a)(3) of the Act or, where applicable, a Person operating pursuant to an

In addition, throughout its exemption application, AMSE proposes to perform regulatory oversight of its members that is consistent with the powers and responsibilities of an SRO.[30] Specifically, AMSE proposes to regulate its members with respect to: training, experience, and competence;[31] financial responsibility and operational capacity;[32] the maintenance of books and records;[33] business conduct;[34] anti-money laundering compliance programs;[35] extension of margin or credit;[36] custody of customer funds or securities;[37] fraud and manipulation;[38] and

---

exemption from registration under the Act"). Section 3(a)(3) of the Act defines "member" exclusively within the context of either a national securities exchange or a national securities association, which are self-regulatory organizations. See 15 U.S.C. 78c(a)(3), (26).

30 SROs' wide-ranging responsibilities generally involve rulemaking, examining member firms for compliance with those rules and the securities laws (including the Commission's rules thereunder), taking disciplinary action against members that fail to comply, and market monitoring, as well as professional activities such as testing, training, and licensing. See, e.g., 15 U.S.C. 78f(b)(1) (requiring a national securities exchange to be so organized and have the capacity to enforce compliance by its members and associated persons with the Exchange Act, the rules and regulations thereunder, and the rules of the exchange); 15 U.S.C. 78o-3(b)(2) (requiring the same of registered securities associations); 15 U.S.C. 78f(b)(2)-(10) (specifying requirements for the rules of a national securities exchange, including with respect to preventing fraudulent acts and practices, and with the discipline of members); 15 U.S.C. 78o-3(b)(3)-(15) (specifying requirements for rules of a registered securities association, including with respect to preventing fraudulent acts and practices, and with the discipline of members); 15 U.S.C. 78o-3(g)(3)(B) (providing that a registered securities association may bar natural persons from association with a member if the person does not meet standards of training, experience, and competence prescribed by rules of the association); and 15 U.S.C. 78q(d) (providing for allocation of examination authority across self-regulatory organizations).

31 See AMSE Rule 2.4(b).

32 See AMSE Rule 2.4(c)(1).

33 See AMSE Rules 2.4(c)(2) and 4.1-4.4.

34 See AMSE Rules 3.1-3.14.

35 See AMSE Rule 5.6.

36 See AMSE Rule 6.1.

37 See AMSE Rule 10.12.

38 See AMSE Rules 11.1-11.4.

compliance with broker best execution obligations.[39] AMSE also proposes to regulate the associated persons of its members and would require each member to establish, maintain, and enforce written supervisory procedures to enable the member to supervise the activities of its associated persons and to ensure their compliance with the securities laws, rules, regulations and statements of policy promulgated thereunder, as well as with AMSE rules.[40] Moreover, at times AMSE asserts that it is required to perform such functions under the Act,[41] implying that it will be an SRO, or acting in an equivalent, self-designated capacity it calls a "limited volume exempt regulatory organization."[42] As the 1st Trade Letter observed, AMSE appears to be "attempting to operate with the most lenient regulatory constraints possible and in this attempt are circumventing many accepted practices and regulatory requirements."[43]

---

39 See AMSE Rule 11.8.

40 See AMSE Rule 5.1; see also AMSE Rules 5.2-5.5.

41 See, e.g., AMSE February 8 Letter at 5 (stating "AMSE has expressly elected not to register as a broker-dealer and comply with the provisions of Regulation ATS and therefore is required to exercise self-regulatory powers."); and AMSE Rule 12.5 ("The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Act…"). Section 6 of the Act imposes regulatory obligations on national securities exchanges, which are self-regulatory organizations; Section 19(g) of the Act imposes obligations on self-regulatory organizations. See 15 U.S.C. 78f and 78s(g); see also 15 U.S.C. 78c(26) (defining self-regulatory organization to include registered national securities exchange, national securities associations, and clearing agencies).

42 The term "limited volume exempt regulatory organization" is not a recognized term under the Act. AMSE created this defined term in its rules. See AMSE Rule 1.5(ee) ("'LVERO' means an entity exercising self-regulatory powers pursuant to an exemption from registration under the Act"). As noted above, prior to submitting Amendments 2A and 2B, AMSE had referred to itself as an SRO; AMSE replaced many of these references with "limited volume exempt regulatory organization" after the Commission explained in December 2014 its preliminary view that AMSE would not qualify as an SRO. Critically, AMSE did not accompany this nomenclature change with any meaningfully limitations on the powers and responsibilities that it proposed to exercise.

43 1st Trade Letter at 3.

AMSE also proposes to require its members and their associated persons to agree to be regulated by AMSE and to recognize AMSE as being obligated to enforce their compliance with the Act and regulations thereunder.[44] AMSE also would require its members and associated persons to recognize AMSE as being required to discipline them for violations of the Act, including through: expulsion; suspension; limitation of activities, functions, and operation; fines; censure; suspension or bar from association with an AMSE member; or any other sanction determined in AMSE's discretion for violations of the Act.[45] Here again, these are powers and responsibilities exercised by an SRO.[46]

III. Discussion

A. AMSE does not appear to meet the definition of an "exchange."

At the outset, we note that AMSE has urged the Commission to conclude that AMSE should be granted an exemption from exchange registration under the Act. Certain provisions of AMSE's amended application indicate that AMSE's members may operate multiple distinct trading systems, under an AMSE umbrella, while other provisions indicate that AMSE itself would operate the proposed trading systems.[47]

---

44 See AMSE Rules 2.2 and 2.5(e).

45 See AMSE Rule 2.2. AMSE's rules quote the language in the Act that gives national securities exchanges and national securities associations the authority to enforce compliance by their members with the Act. See 15 U.S.C. 78f(b)(6) and 78o-3(b)(7).

46 See infra Section III.B.

47 Compare AMSE Rule 11.8 (referring to participant orders being executed "on a designated trading platform, including that of a trading system operated by the Exchange Member"); and Amendment 2B, Exhibit E, Section D (requiring AMSE members to be responsible for having procedures for safeguarding their systems); with Amendment 2B, Exhibit E, Section A ("the Exchange will operate one or more fully automated electronic order books"); id. at Section E ("[o]rders of Participants shall be ranked and maintained in the Exchange's electronic books for orders"); and id. at Section F ("[o]rders shall be matched for execution...on the Exchange's electronic order book").

These conflicting provisions make it difficult to ascertain the operation of the trading system. Moreover, the lack of detail and clarity in AMSE's exemption application prevents the Commission from understanding precisely how AMSE proposes to bring together the orders of multiple buyers and sellers and otherwise satisfy the definition of "exchange." Under these circumstances, we would have grave doubts as to whether AMSE could in fact qualify as an exchange exempt from registration under the Act. We need not reach the merits of this issue, however, because as we describe below AMSE's exemption application suffers from a separate, fatal flaw.

B. It is contrary to the Act and inconsistent with the public interest and the protection of investors for an exempt exchange to exercise the powers and responsibilities of an SRO.

Even assuming that AMSE were deemed to be an exchange, the Commission cannot find that AMSE should be granted an exemption from the requirement to register as a national securities exchange under Section 6 of the Act because the Commission believes that AMSE's proposal is inconsistent with the Act.[48] As described above, AMSE proposes to exercise extensive self-regulatory powers that are reserved under the Act for an SRO—indeed, the bulk of AMSE's rules are devoted to this proposed regulatory function, and at times AMSE even refers to itself as an SRO. But the Act does not afford the powers and responsibilities of an SRO to an

48 For a history of the formation and regulation of stock exchanges, see generally Concept Release Concerning Self-Regulation, Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256, at 71257-58 (December 8, 2004); CHARLES R. GEISST, WALL STREET: A HISTORY (1997); MICHAEL E. PARRISH, SECURITIES REGULATION AND THE NEW DEAL (1970); JOEL SELIGMAN, THE TRANSFORMATION OF WALL STREET: A HISTORY OF THE SECURITIES AND EXCHANGE COMMISSION AND MODERN CORPORATE FINANCE (3d ed. 2003).

exchange that is exempt from registration, nor does it require an exchange that is exempt from registration to exercise such powers and responsibilities.[49]

Section 3(a)(26) of the Act defines an SRO, in pertinent part, as any "national securities exchange."[50] An entity may only become a "national securities exchange" by registering under Section 6(a) of the Act,[51] as the Commission has previously explained.[52] And, although Section 5 of the Act permits an exempt exchange to operate lawfully without registering as a national securities exchange,[53] an exempt exchange is, by definition, not a national securities exchange,[54] and, thus, does not fall within the definition of "self-regulatory organization" under the Act. It necessarily follows that, were we to grant AMSE the exemption it seeks, AMSE

49 See supra note 41 and accompanying text.

50 15 U.S.C. 78c(a)(26) (defining SRO as "any national securities exchange, registered securities association, or registered clearing agency"). See generally Barbara v. New York Stock Exchange, Inc., 99 F.3d 49, 51 (2d Cir. 1996) (explaining that "[u]nder the Act, [a national securities exchange] 'is a self-regulatory organization'").

51 "An exchange may be registered as a national securities exchange under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 19(a) of this title, by filing with the Commission an application for registration...." 15 U.S.C. 78f(a).

52 In a previous order granting an exemption from registration under Section 5 of the Act, the Commission stated that "[b]y virtue of this exemption from registration, the Wunsch System falls outside the definition of a national securities exchange because the term 'national securities exchange' implies a registered entity (see, e.g., sections 3(a)(26) of the Act (defining the term 'self-regulatory organization') and section 6(a) of the Act."). See Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377, 8382 note 51 (February 28, 1991).

53 To grant an exemption from the requirement to register as a national securities exchange, the Commission must conclude that, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require registration. 15 U.S.C. 78e.

54 It is self-evident that an exchange cannot be exempt, under Section 5, from registering as a national securities exchange under Section 6, while simultaneously existing as a national securities exchange under Section 6.

would not be entitled, much less required by the Act, to hold itself out as an SRO or to exercise the self-regulatory authority that is statutorily afforded to SROs.

Nevertheless, there remains the question whether, in our discretion, we could allow AMSE to exercise the powers and responsibilities of an SRO, notwithstanding the fact that AMSE, as an exempt exchange, would not meet the definition of an SRO. Although the statutory language does not unambiguously forbid such a result, we conclude that we lack the authority under the Act to permit an exempt exchange to exercise the powers and responsibilities reserved for an SRO. In our view, the Act reflects a deliberate balance between, on the one hand, granting SROs the broad, quasi-governmental authority that AMSE proposes to exercise, and, on the other hand, ensuring that an SRO's exercise of this authority is carefully checked by close Commission oversight.[55] Indeed, we believe this understanding is further supported by a primary Congressional purpose underlying the 1975 amendments to the Act,[56] through which "Congress specifically and importantly modified [the system of self-regulation in the securities industry] to enhance the SEC's oversight of self-regulatory organizations."[57] As the Senate Report accompanying the 1975 amendments explained, "[t]he SEC is charged with supervising the exercise of this self-regulatory power in order to assure that it is used effectively to fulfill the

---

55 See, e.g., In re Series 7 Broker Qualification Exam Scoring Litig., 548 F.3d 110, 112, 114 (D.C. Cir. 2008) (explaining that "[t]he Exchange Act reveals a deliberate and careful design for regulation of the securities industry" that "depends on the SEC's delegation of certain governmental functions to private SROs" and describing how this "delegation involves close oversight" by the Commission). See also S. Rep No. 94-75, at 24 ("self-regulatory organizations exercise government power").

56 Securities Acts Amendments of 1975, P.L. 94-29.

57 NASD v. SEC, 431 F.3d 803, 807 (D.C. Cir. 2005).

responsibilities assigned to the self-regulatory agencies, and that it is not used in a manner inimical to the public interest or unfair to private interests."[58]

Yet were we to allow AMSE to exercise the powers and responsibilities of an SRO without actually qualifying as such under the Act—i.e., without registering as a national securities exchange—we would be deprived of many of the means that Congress thought were critical for our effective oversight of the exercise of self-regulatory powers. By its express terms, the Act affords us such oversight authority only over an entity that qualifies as an SRO, which AMSE would not have done. Accordingly, if we allowed an exempt exchange to exercise the broad powers and responsibilities of an SRO, we would lack the authority over that exempt entity that we would normally have possessed over SROs to, among other things, "approve or disapprove the proposed rule change[s],"[59] "abrogate, add to, [or] delete from" an exchange rule,[60] review a final disciplinary sanction imposed by the exchange or any denial of access,[61] "suspend for a period not exceeding twelve months ... or to censure or impose limitations upon

---

58 S. Rep No. 94-75, at 23. See also id. at 22 (explaining that the 1975 amendments were intended to "clarify and strengthen the Commission's oversight role with respect to the self-regulatory organizations"); id. at 23 ("The self-regulatory organizations exercise authority subject to SEC oversight. They have no authority to regulate independently of the SEC's control."); id. (explaining that an objective of the 1975 amendments was "assuring that the self-regulatory organizations follow effective and fair procedures, that their activities are not anticompetitive and that the Commission's oversight powers are ample and its responsibility to correct self-regulatory lapses is unmistakable"). See generally Onnig H. Dombalagian, Demythologizing the Stock Exchange: Reconciling Self-Regulation and the National Market System, 39 U. RICH. L. REV. 1069, 1080 (2005) ("One of the principal changes [of the 1975 amendments] to the framework for exchange self-regulation was to impose greater limitations on the exercise of rule making and disciplinary authority by exchanges.").

59 15 U.S.C. 78s(b).

60 15 U.S.C. 78s(c).

61 15 U.S.C. 78s(d)-(e).

the activities, functions, and operations" of the exchange for specified misconduct,[62] or "remove from office or censure" any officer or director of the exchange for specified misconduct.[63] We do not believe that such a result would be consistent with the Congressional desire, as revealed through the statutory language and the legislative history, that the Commission closely oversee the exercise of self-regulatory authority.[64]

This conclusion is consistent with our prior reading of the Act. As the Commission has previously stated, "any system exercising self-regulatory powers, such as regulating its members' or subscribers' conduct when engaged in activities outside of that trading system, must register as an exchange or be operated by a national securities association [which is also an SRO under the statutory definition]. This is because self-regulatory activities in the securities markets must be subject to Commission oversight under Section 19 of the Exchange Act."[65] As we have explained, under our view of the Act, "any system that uses its market power to regulate its participants should be regulated as an SRO."[66]

---

62 15 U.S.C. 78s(h)(1). See generally S. Rep No. 94-75, at 34 (explaining that the oversight authorities under Section 19(h)(1) of the Act are "in addition to suspension and deregistration and are intended to provide more usable sanctions than the SEC's traditional 'big stick'").

63 15 U.S.C. 78s(h)(4).

64 We note that Congress also afforded the Commission authority to enlist the assistance of the federal courts in carrying out its oversight role. See S. Rep No. 94-75, at 35 ("Sections 21(e) and 21(f) [of the Exchange Act] would empower the SEC to apply to a federal court for an order to (1) enjoin the violation of the rules of a self-regulatory organization, (2) command a member of a self-regulatory organization to comply with the rules of such organization, or (3) command a self-regulatory organization to enforce compliance by its members with the Exchange Act, the rules thereunder, and the organization's own rules.").

65 See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70847 (December 22, 1998) ("Regulation ATS Adopting Release").

66 See Regulation ATS Adopting Release, 63 FR at 70859.

Accordingly, as we read the Act, an exempt exchange is relieved of the statutory obligations of a registered SRO but also forfeits the ability to exercise the statutory authority of an SRO. To the extent that AMSE desires to perform the extensive range of self-regulatory responsibilities described in its exemption application, it must qualify and register as a national securities exchange (or a national securities association).

In any event, even if we possessed the authority to grant AMSE an exemption notwithstanding its intention to exercise the powers and responsibilities reserved for SROs, we do not believe that doing so would be consistent either with investor protection or the public interest. In our view, when an exchange wants to exercise the broad powers and responsibilities that AMSE is seeking here, an exemption from registration is not appropriate because the Commission would lack sufficient oversight mechanisms to ensure that the self-regulatory authority is not exercised in a manner inimical to the public interest or unfair to private interests. The Commission's oversight responsibilities towards SROs has been a cornerstone of self-regulation from its inception.[67] Indeed, due to the potential harm to capital formation, investors, and the public interest that could result from the misuse of the securities markets, as noted above, Congress intentionally created a highly regulated environment in which SROs must be subject to close oversight by the Commission. Put simply, an entity seeking to establish and enforce a comprehensive regulatory structure with respect to the securities business of its broker-dealer members—including the full range of business conduct, financial condition, and regulatory compliance matters—could have a substantial impact on the way those members engage in the securities business and comply with the federal securities laws.[68] In our view, any such entity

67 See William O. Douglas, Democracy and Finance 82 (1940).

68 See, e.g., Securities Industry Study, Report of the Subcommittee on Securities, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, 93rd Cong., at 14

should be subject to full Commission oversight to assure its performance of such functions is consistent with the protection of investors and the public interest. For these additional reasons, in the exercise of our discretion under Section 5 of the Act, we would deny the exemption application.

Our conclusion today is not inconsistent with prior Commission practice. At the outset, we think it is important to observe that the Commission has rarely exercised its exemptive authority under Section 5—indeed, it has granted a limited volume exemption, as sought by AMSE here, on only two prior occasions in the past 79 years.[69] And while the Commission imposed certain conditions upon exemptions from exchange registration when it granted them, the exemptions and conditions thereto neither allowed nor required the exercise of the extensive

---

(1973) ("The broad powers delegated to the exchanges and the NASD under the Exchange Act include the power to affect the interests of individuals and firms, both members and non-members.").

69 In 1991, the Commission issued a limited volume exemption from exchange registration for Wunsch Auction Systems, Inc. ("WASI") (now known as "Arizona Stock Exchange"). See Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377(February 28, 1991) ("WASI Order"). WASI proposed to operate an auction trading system for after-hours trading three times a week, at a half an hour each. In 1999, the Commission issued a limited volume exemption from exchange registration for Tradepoint Financial Networks plc ("Tradepoint") (now known as "Swiss Exchange"). See Securities Exchange Act Release No. 41199 (March 22, 1999), 64 FR 14953 (March 29, 1999). Tradepoint operated as a U.K.-registered trading facility and offered trading only in securities listed on the London Stock Exchange. Aside from these two exemptions, the Commission has only issued limited volume exemptions under Section 5 of the Act in the period from 1935 to1936; the exemptions issued then were for a small group of municipally-based securities exchanges that were already in existence at the time of the initial adoption of the Act in 1934. See Securities Exchange Act Release No. 416, November 14, 1935 (exempting the Honolulu Stock Exchange, the Milwaukee Grain and Stock Exchange, and Minneapolis-St. Paul Stock Exchange); Securities Exchange Act Release No. 432, December 2, 1935 (exempting the Richmond Stock Exchange and Wheeling Stock Exchange); Securities Exchange Act Release No. 472, February 3, 1936 (exempting the Colorado Springs Stock Exchange); Securities Exchange Act Release No. 589, April 10, 1936 (exempting the Seattle Stock Exchange).

SRO authority that AMSE is seeking.[70] Moreover, although the Commission acknowledged in the Regulation ATS Adopting Release that an exemption under Section 5 could be available for an exchange that has self-regulatory attributes,[71] the Commission has never granted an

70 See Securities Exchange Act Release No. 416, November 14, 1935 (requiring the Honolulu Stock Exchange, the Milwaukee Grain and Stock Exchange, and the Minneapolis-St. Paul Stock Exchange to keep up-to-date and available to the public the data contained in the application for exemption, make and keep required records, provide reports as necessary, and provide in their rules that a willful violation of any of the exemption conditions shall be inconsistent with just and equitable principles of trade, and providing that the same restrictions with regard to the extension of credit for registered securities are imposed on securities listed on these exchanges, that members of the exchanges are subject to Commission-imposed financial responsibility rules and regulations, that the manipulation provisions of the Securities Exchange Act apply to the exchanges and their members, and that companies whose securities are listed on the exchanges are required to file with the exchange and Commission certain annual financial statements); Securities Exchange Act Release No. 432, December 2, 1935 (granting exemptions for the Richmond Stock Exchange and the Wheeling Stock Exchange upon the same conditions imposed on the exchanges in Securities Exchange Act Release No. 416); Securities Exchange Act Release No. 472, February 3, 1936 (granting an exemption to the Colorado Springs Stock Exchange upon the same conditions imposed on the exchanges in Securities Exchange Act Release Nos. 416 and 432); Securities Exchange Act Release No. 589, April 10, 1936 (granting an exemption to the Seattle Stock Exchange upon the same conditions imposed on the exchanges in Securities Exchange Act Release Nos. 416, 432, and 472); WASI Order (granting an exemption based on the condition that WASI (1) permit the Commission to conduct examinations; (2) comply with its agreement to report volume and price data to the Commission and to SROs, and provide other information (such as the identities of participants who have entered orders) to the Commission and the SROs upon request; (3) comply with its undertaking to implement procedures to conduct surveillance of its employees and adopt requirements to ensure the non-disclosure of confidential information; (4) suspend trading in any security subject to a regulatory halt for pending news called by the primary market for the security or during suspensions of trading ordered by the Commission pursuant to Section 12(k) of the Act, and consult with the Commission subsequent to an exchange or NASDAQ session in which an operational trading halt has occurred or a circuit breaker has gone into effect; (5) suspend any auction at the request of the Commission, assuming adequate notice is given, and (6) continue to comply with the capacity, security, and contingency planning guidelines contained in the Commission's Automation Review Policy).

71 In the Regulation ATS Adopting Release, the Commission stated that it "believes that the low volume exemption continues to be appropriate for some exchanges, such as an exchange that, for example, disciplines its members (other than by excluding them or limiting them from trading based on objective criteria, such as creditworthiness), or has

exemption to an exchange seeking to carry out the broad range of self-regulatory functions performed by registered SROs, as proposed by AMSE.[72] Rather, the Commission has granted an exemption only once to an exchange with "self-regulatory attributes"[73] and, in that case, the exchange sought only to impose financial and operational standards as a condition for eligibility for trading.[74] The limited self-regulatory attributes in that case stand in stark contrast to the full scope of self-regulatory powers sought by AMSE here.

---

other self-regulatory attributes that exclude it from the definition of alternative trading system." See Regulation ATS Adopting Release, 63 FR at 70848, note 33.

72 See supra notes 30 - 45 and accompanying text.

73 The Commission notes the distinction between entities that display "self-regulatory attributes"—which implies having only a few features of an SRO, such as disciplining members for violations of its own rules—and entities seeking to exercise all or nearly all of the powers of SROs under the Act. As discussed above, AMSE's application shows that it is not proposing merely to have a few self-regulatory attributes, but rather seeks to exercise the full range of powers available to SROs under the Act. See supra notes 30 - 45 and accompanying text. Under these conditions, the Commission continues to believe, as previously stated, that the SRO functions can be exercised only by an SRO, not an exempt exchange.

74 See Securities Exchange Act Release No. 41199 (March 22, 1999), 64 FR 14953 (March 29, 1999) (order granting a limited volume exemption under Section 5 of the Act to Tradepoint).

C. AMSE is mistaken in its interpretation of the relevant procedural requirements relating to its exemption application.

AMSE has labored under certain misunderstandings of the relevant procedures throughout its interactions with the staff on this matter. To the extent that there is any ambiguity in these procedures, we take this opportunity to provide clarification. AMSE erroneously reads Rule 202.3(b)(2) of the Commission's procedural rules as establishing an enforceable right on the part of AMSE to require the Commission's staff to confer with AMSE. Rule 202.3(b)(2) provides, in relevant part:

> Applications for registration as national securities exchanges, or exemption from registration as exchanges by reason of such exchanges' limited volume of transactions filed with the Commission are routed to the Division of Market Regulation, which examines these applications to determine whether all necessary information has been supplied and whether all required financial statements and other documents have been furnished in proper form. . . . <u>The staff confers with applicants and makes suggestions in appropriate cases for amendments and supplemental information</u>. Where it appears appropriate in the public interest and where a basis therefore exists, denial proceedings may be instituted. (Emphasis added).

AMSE appears to construe the above-emphasized language to establish a binding obligation on the Commission staff to work with AMSE to achieve Commission approval of its exemption application.

But the rule contains no such requirement; indeed, it does not prescribe any procedure that the Commission staff must follow when working with applicants on applications for registration or exemption from registration. To the contrary, when the rule refers to Commission staff conferring with applicants, it is expressly descriptive, rather than prescriptive, as to the staff's actions. And, critically, it provides only that the staff will "confer[] with applicants and make[] suggestions <u>in appropriate cases</u> . . . ."[75] The rule thus explicitly leaves it to the staff to

[75] 17 CFR 202.3(b)(2) (emphasis added).

identify the situations in which it would be appropriate to confer with applicants.[76] It certainly does not (as AMSE appears to believe) entitle applicants to obtain guidance from the staff so that the applicants can repeatedly amend their applications before the Commission issues its final order.[77] In any event, as noted above, Commission staff in fact consulted with AMSE and provided views and input to AMSE about its application.[78]

IV. Conclusion

The Commission has reviewed AMSE's application for a limited volume exemption from registration as a national securities exchange and has determined, for the reasons described above, to deny AMSE's application.[79]

---

76 See, e.g., Dichter–Mad Family Partners, LLP v. United States, 707 F.Supp.2d 1016, 1042–43 (C.D. Cal. 2010), aff'd, 709 F.3d 749 (9th Cir. 2013) (dismissing plaintiffs' claims upon finding, among other things, that even though statute mandated that agency staff "shall" engage in certain conduct, such language was "modified by the discretionary 'as appropriate'" and thus statute conferred discretion upon agency officials). Cf. Nat'l Env't. Dev. Ass'n's Clean Air Project v. EPA, 686 F.3d 803, 813 (D.C. Cir. 2012) (concluding that the statutory phrase "as appropriate" conferred "significant discretion" upon the agency); Bear Valley Mut. Water Co. v. Salazar, No. 11-01263, 2012 WL 5353353 (C.D. Cal. Oct. 17, 2012) (same); City of Toledo v. Beazer Materials & Servs., Inc., No. 90-CV-7344, 1995 WL 770396 (N.D. Ohio June 14, 1995) (the same phrase in a federal regulation indicated that the described activity was "not mandatory").

77 Nor does the rule contain any suggestion that, absent such a conference with the staff, the administrative record would be fatally deficient and any subsequent action by the Commission on the application would be improper.

78 See supra note 6 (discussing communications between Commission staff and AMSE regarding AMSE's application occurring between December 2013 and March 2014).

79 We note that, at times during the pendency of its exemption application, AMSE made unsubstantiated claims of bad faith on the staff's part. We see no indication of any bad faith, however. And in any event, we have reached our determination to deny AMSE's exemption application based on our own independent review of the application. Accordingly, we are confident that AMSE has had a full and fair opportunity to present its application to us for consideration and that AMSE has suffered no prejudice.

IT IS THEREFORE ORDERED, pursuant to Section 5 of the Act, that AMSE's application for an exemption from registration as a national securities exchange be, and hereby is, denied.

By the Commission

Brent J. Fields
Secretary

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 75168 / June 12, 2015

Admin. Proc. File No. 3-15432

In the Matter of the Application of
ATLANTIS INTERNET GROUP CORPORATION
For Review of Action Taken by
THE DEPOSITORY TRUST COMPANY

OPINION OF THE COMMISSION

REGISTERED CLEARING AGENCY PROCEEDING

Suspension of Services with Respect to Issuer's Securities

Registered clearing agency stopped accepting new deposits of issuer's securities and subsequently suspended all book-entry clearing and settlement services with respect to issuer's securities held by clearing agency's Participants. *Held*, registered clearing agency provided issuer with notice and an opportunity to be heard, and kept a record of the proceeding. But registered clearing agency did not provide a statement of the specific grounds for the suspension, as required under the Securities Exchange Act of 1934, and proceeding is *remanded* to clearing agency in order to do so.

APPEARANCES:

Simon S. Kogan, Esq., Staten Island, NY, for Atlantis Internet Group Corporation.

Gregg M. Mashberg, Lawrence S. Elbaum, and Aimee T. Bandler, of Proskauer Rose LLP, New York, NY, for the Depository Trust Company.

Appeal filed: August 20, 2013
Last brief received: January 2, 2014

I.

Atlantis Internet Group Corporation ("Atlantis" or "the Company") appeals from two actions of The Depository Trust Company ("DTC").[1] On July 8, 2011, DTC stopped accepting additional deposits of Atlantis shares for depository and book-entry transfer services (the "Deposit Chill").[2] On August 24, 2012, DTC suspended all book-entry and related depository services provided to DTC's Participants with respect to the shares of Atlantis (the "Global Lock").[3]

II.

A. DTC notified Atlantis of the Deposit Chill, and the parties exchanged written submissions related thereto.

On May 9, 2012, DTC informed Atlantis in writing of the July 8, 2011 Deposit Chill.[4] DTC explained that it "detected that one or more [DTC] participants made unusually large deposits of the [Atlantis] issue during the period of September 9, 2010 to the date of the Deposit Chill" and that "[t]he volume and timing of the deposits [raised] substantial questions as to whether these shares are freely tradable, a prerequisite for shares being deposited into the DTC system for book-entry services." DTC further stated that the Deposit Chill would be released if

---

1 DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation, a non-regulated holding company. DTC, as a registered clearing agency, falls within the definition of a self-regulatory organization ("SRO"). 15 U.S.C. § 78c(a)(26). DTC provides clearance, settlement, custodial, underwriting, registration, dividend, and proxy services for a substantial portion of all equities, corporate and municipal debt, exchange-traded funds, and money market instruments available for trading in the United States.

2 A Deposit Chill blocks the further deposit of securities of the issuer at DTC, but other DTC services, including book-entry transfer services, continue to be provided with respect to securities of the issuer deposited at DTC before the Deposit Chill.

3 The Global Lock terminates all DTC services with respect to the issuer's securities. DTC's "Participants" are generally broker-dealers.

4 In *International Power Group, Ltd.* ("*IPWG*") (discussed in greater detail below), where DTC had imposed a Global Lock on the issuer applicant's shares, the Commission found that issuers of securities with respect to which a clearing agency provides clearance and settlement services were "persons" entitled to Commission review of DTC actions denying or limiting them "with respect to access to [DTC] services." Securities Exchange Act Release No. 66611, 2012 WL 892229, at *6 (Mar. 15, 2012). The Commission further found that, to comply with its statutory obligation to provide fair procedures, DTC must provide notice of its determination to the issuer specifying the basis for DTC's action, and must also provide the issuer with an opportunity to be heard. *See id.* at *6-7. Before the issuance of *IPWG*, DTC took the position that issuers (as non-DTC Participants) were not entitled to notice and an opportunity to be heard when DTC suspended certain of its services with respect to the issuer's securities. Thus, DTC did not provide Atlantis notice of the pre-*IPWG* Deposit Chill when it was initially imposed.

Atlantis could demonstrate that the sale and transfer of the shares at issue "was made pursuant to an effective registration statement or entitled to an exemption from registration," supported by a legal opinion to that effect, issued by an independent attorney.

On June 20, 2012, in an effort to obtain the release of the Deposit Chill, Atlantis submitted a proposed legal opinion letter in which it asserted that the majority of the Atlantis shares on deposit at DTC were "freely tradable when deposited with DTC," because the securities had been offered pursuant to valid exemptions from registration or acquired in debt conversion transactions for which the holding period had passed.[5] Atlantis's letter further stated that Atlantis's counsel could not opine as to 74,100,000 Atlantis shares held by brokers, representing "approximately 10% of the total shares in question," but that Atlantis was "not aware of any shares that became free trading without legal opinions in accordance with transfer agent requirements to remove restrictive legend."

On July 3, 2012, DTC rejected the letter Atlantis submitted and provided Atlantis with a template of the legal opinion it required, asking that Atlantis's counsel "follow this form as closely as possible." DTC also requested documentation, including copies of executed securities purchase agreements and any applicable private placement memoranda, as well as accredited investor certifications for investors in any private placements of Atlantis stock. Atlantis did not provide the legal opinion letter or any of the additional information DTC requested. Atlantis submitted no further documentation opposing the Deposit Chill from July 2012 until it filed this appeal.

B. DTC imposed the Global Lock, and the parties exchanged written submissions and conducted numerous discussions related thereto.

On August 14, 2012, the Commission filed a complaint in the United States District Court for the Eastern District of Texas alleging that TJ Management Group, LLC ("TJM"), a New York limited liability company, had engaged in a distribution of unregistered shares of eleven companies, including Atlantis, when no valid exemption from registration was available (the "TJM Action").[6] The complaint alleged that "TJM bought 33.9 million shares of [Atlantis] in eleven unregistered offerings for $435,791 and resold all 33.9 million shares into the public

---

5 Atlantis requested, and DTC granted, an extension of time from the initial thirty days specified in DTC's May 9 letter to file its proposed opinion letter.

6 *SEC v. Kahlon, et al.*, No. 4:12-CV00517 (E.D. Tex. Aug. 14, 2012), Lit. Rel. No. 22452, 2012 WL 3560643 (Aug. 17, 2012). The complaint stated that venue for the proceeding lies in Texas because twenty-five of the alleged unregistered offerings at issue took place, in whole or in part, in McKinney, Texas, where one of the issuers other than Atlantis was headquartered. The complaint also stated, as a basis for its jurisdiction over the proceeding, that TJM "improperly sought to avail [itself] of a securities registration exemption of the Texas Securities Act."

market without registration for $793,879, representing gains of 82%." The complaint further alleged that "[n]o registration statement was in effect and no valid exemption from registration applied to TJM's resale of [Atlantis] shares with a view to distribution." As a result, the Commission alleged that TJM violated Section 5 of the Securities Act of 1933.[7]

After the institution of the TJM Action, DTC imposed the Global Lock with respect to Atlantis's securities on August 24, 2012, issuing an "Important Notice" to its Participants, Depository Facilities, and Pledgee Banks (although not directly to Atlantis).[8] On September 14, 2012, DTC directly informed Atlantis of the Global Lock in writing.[9] DTC stated that its "records demonstrate that some or all of the [Atlantis shares traded by TJM] were deposited at DTC and commingled with shares of the Issue on deposit at DTC for book entry services. As a result, DTC has imposed the Global Lock in order to prevent, among other things, the unregistered securities from being transferred on the books of DTC."

DTC subsequently learned of another Commission enforcement action in the United States District Court for the Southern District of New York alleging that E-Lionheart Associates, LLC, a Delaware limited liability company with its principal place of business in New York City, had engaged in an illegal purchase and distribution of penny stocks similar to that alleged in the TJM complaint (the "E-Lionheart Action").[10] The complaint in that action stated that E-Lionheart "obtained and illegally resold the stock of approximately 100 companies, reaping profits of more than $10 million while depriving the investing public of the protections of the registration requirements of the securities laws." Although the complaint does not specifically refer to Atlantis as one of the issuers whose securities the defendants were alleged to have illegally distributed, DTC's records show, and Atlantis does not dispute, that Atlantis shares on deposit at DTC at the time were registered to E-Lionheart.

---

7 15 U.S.C. § 77e.

8 Although DTC did not provide written notice of the Global Lock directly to Atlantis until September 14, 2012, the record makes clear that Atlantis was aware of the Global Lock before then. On August 30, 2012, Atlantis's counsel sent a proposed letter appealing the Global Lock to DTC, although the cover email stated that Atlantis "remain[s] amenable to trying to work something out without litigation or hearings." On September 10, 2012, Atlantis's counsel sent another follow-up email asking for the status of the Global Lock.

9 In *IPWG*, we stated, "If DTC believes that circumstances exist that justify imposing a suspension of services with respect to an issuer's securities in advance of being able to provide the issuer with notice and an opportunity to be heard on the suspension, it may do so. However, in such circumstances, these processes should balance the identifiable need for emergency action with the issuer's right to fair procedures under the Exchange Act. Under such procedures, DTC would be authorized to act to avert an imminent harm, but it could not maintain such a suspension indefinitely without providing expedited fair process to the affected issuer." *IPWG*, 2012 WL 892229, at *7.

10 *SEC v. Bronson, et al.*, No. 7: 12-cv-6421 (S.D.N.Y. Aug. 22, 2012), Lit. Rel. No. 22457 (Aug. 23, 2012).

On September 19, 2012, Atlantis made a request for a DTC hearing on the Global Lock. On October 15, 2012, Atlantis submitted a proposed legal opinion letter in which it claimed that the Atlantis securities registered to TJM and E-Lionheart on deposit at DTC "were issued in transactions conducted in accordance with Rule 504 of Regulation D and were not required to be registered with [the Commission]."[11] On October 26, 2012, DTC's outside securities counsel responded to the proposed Atlantis legal opinion letter, stating that, "based on the information currently available to [the outside counsel]," the issuances of Atlantis shares to TJM and E-Lionheart did not qualify for the exemption from registration claimed by Atlantis under Rule 504(b)(1)(iii) of Regulation D. This provision exempts from registration offers and sales of securities that are made "exclusively according to state law exemptions from registration that permit general solicitation and general advertising so long as sales are made only to 'accredited investors.'"[12] Specifically, DTC's outside counsel noted that it appeared that the TJM and E-Lionheart transactions lacked a "sufficient nexus" to Texas and Delaware, respectively, to permit them to rely on exemptions under the laws of those states. Further, DTC's outside counsel stated that it did not appear that the Texas and Delaware statutes in question permit general solicitation and advertising, as required under Rule 504(b)(1)(iii).[13]

On November 5, 2012, Atlantis submitted a response to the DTC outside counsel's letter, attaching copies of subscription agreements and legal opinion letters, and maintaining that the issuances of Atlantis stock to TJM and E-Lionheart were exempt from registration under Rule 504. In an email exchange on December 2 and 3, 2012, Atlantis continued to press its argument that the issuances were exempt from registration, and DTC's outside counsel responded that it found Atlantis's arguments unpersuasive for the reasons provided in its October 26 letter.

Subsequently, Atlantis proposed various solutions to the Global Lock involving registering its shares with the Commission. For example, Atlantis proposed to file a registration statement with the Commission for the shares at issue. DTC responded that, if Atlantis did so, "DTC would accept that as a resolution of the matter and release the chill." But Atlantis never filed a registration statement. Later, in April 2013, Atlantis "contemplat[ed] a registered transaction involving a reverse merger with a public shell; or a similar transaction designed to

---

11 The record establishes that Atlantis's and DTC's counsel engaged in email discussions about the content of the necessary opinion letter during the intervening weeks between Atlantis's hearing request and the Company's submission of the proposed opinion letter.

12 17 C.F.R. § 230.504(b)(1)(iii).

13 The TJM Action remains pending before the federal district court in Texas. In the E-Lionheart Action pending in New York, the district court issued an Opinion and Order denying the defendants' motion to dismiss the proceeding against them. The court held that, "'according to the law' of Delaware, there is an insufficient nexus between the transactions [at issue in the E-Lionheart Action] and Delaware to allow defendants to invoke [the Delaware statutory provision that was the claimed basis for an exemption from registration]." *SEC v. Bronson*, 14 F. Supp. 3d 402, 417 (S.D.N.Y. 2014). In light of this finding, the court did not address whether, as the defendants claimed, the Delaware statute permitted general solicitation, as required under Rule 504.

eliminate any restrictions on transferability of Atlantis's common shares." But DTC subsequently informed Atlantis that it had consulted with the Commission staff, which "advised DTC that [the Commission staff] are not of the view that such a transaction would result in freely tradable shares."

On or about June 4, 2013, Atlantis returned to its December 2012 proposal to file a registration statement. It wrote to the Commission staff requesting "its position regarding the use of Form S-4 to register shares to be issued in exchange for all outstanding shares issued." But "[Atlantis was] advised by SEC staff that Atlantis . . . would not be issued a no-action letter with respect to its issuing shares pursuant to a new registration statement that would be used to replace DTC's existing inventory."[14] Shortly thereafter, Atlantis filed this appeal.

III.

A. Exchange Act Section 17A requires clearing agencies to provide a fair procedure to issuers such as Atlantis, and the parties dispute whether DTC complied with this requirement.

Under Section 17A(b)(3)(H) of the Exchange Act, registered clearing agencies must "provide a fair procedure with respect to . . . the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency."[15] Pursuant to Exchange Act Section 17A(b)(5)(B), in a proceeding involving a limitation with respect to access to services offered by the clearing agency, clearing agencies must "notify [the issuer] of, and give [the issuer] an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record."[16] Clearing agencies are also required to support such denials, prohibitions, or limitations "by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based."[17] In *IPWG*, we determined that this requirement applied in the case of DTC actions such as the Deposit Chill and Global Lock at issue here.[18]

Atlantis claims that DTC denied it the required fair procedure. In support of this argument, Atlantis complains that DTC has not yet implemented rules providing fair procedures for issuers subject to Deposit Chills and Global Locks, as we instructed DTC to do in *IPWG*. Specifically, Atlantis contends that it was unfair that DTC imposed the Deposit Chill and Global Lock without advance notice and then "create[d] impediments to [Atlantis in] seeking to resolve

---

[14] This is according to an August 15, 2013 email from DTC to Atlantis's counsel. On appeal, Atlantis does not address its attempts to resolve the Global Lock by registering its shares with the Commission.

[15] 15 U.S.C. § 78q-1(b)(3)(H).

[16] 15 U.S.C. § 78q-1(b)(5)(B).

[17] *Id.*

[18] *IPWG*, 2012 WL 892229, at *6.

the chill," such as requiring Atlantis to provide supplemental legal opinion letters attesting that all of its shares deposited with DTC were freely tradable and thus "eligible securities" under DTC Rules.

Atlantis also claims that DTC has not provided it with the hearing it requested. Specifically, Atlantis argues that "due process requires the Petitioner be afforded the opportunity to challenge the Commission allegations [in the TJM and E-Lionheart complaints]." Atlantis contends that the Commission should overturn the Deposit Chill and Global Lock because it "will send a powerful message to [DTC] that it cannot continue to ignore its [due process] obligations" and will "prevent[] [DTC] from imposing guilt by association that is anathema to due process."

DTC argues that it provided Atlantis the required fair procedure. DTC acknowledges that it did not provide Atlantis with advance notice prior to imposing the Global Lock, but claims that doing so was "appropriate under the circumstances in order to 'avert an imminent harm' to DTC and its Participants." DTC also contends that it satisfied the requirement to provide Atlantis with an opportunity to be heard through "consideration of [Atlantis's] legal and factual arguments, discussion of DTC's responses to Atlantis's arguments as well as proposed creative solutions for resolving the dispute." DTC also rejects Atlantis's position that a full testimonial hearing is required, claiming that no such requirement exists under Section 17A or our decision in *IPWG*. DTC concedes that no final decision was reached, but states that this was caused by Atlantis's filing of its application for review "despite DTC's willingness to entertain any further arguments that Atlantis wished to present."

B. DTC provided the requisite notice and opportunity to be heard, and kept a record, but did not adequately identify the basis for its action.

1. We find that DTC provided the required notice and opportunity to be heard to Atlantis here. DTC informed Atlantis in writing that it had imposed the Deposit Chill because "unusually large deposits" of Atlantis shares at DTC raised "substantial questions as to whether [the] shares are freely tradable." DTC provided Atlantis a template of a legal opinion letter that was required to lift the Deposit Chill, but Atlantis never submitted one.

After learning of the TJM Action, DTC imposed the Global Lock. DTC informed Atlantis in writing that it had done so based on allegations that TJM had engaged in an unregistered distribution of Atlantis shares when no exemption from registration was available. Although DTC's written notification here did not expressly state that it had imposed the Global Lock pursuant to the expedited authority specified in *IPWG*,[19] DTC now contends that it "implemented the Global Lock before giving Atlantis notice in order to avoid the imminent harm to the depository, its Participants and the clearance and settlement system that would result from providing further book-entry services with respect to a security that, according to the Commission's allegations in the TJM Action, did not satisfy DTC's eligibility requirements." DTC's imposition of the Global Lock without advance notice was an appropriate exercise of its

[19] *See supra* note 9.

authority to act to prevent imminent harm, and DTC promptly provided Atlantis with information about how to lift the Global Lock. Communications between DTC and Atlantis began within a few days of the imposition of the Global Lock, and the record makes clear that Atlantis was aware of the Global Lock weeks before DTC sent its formal notice.

Atlantis then requested a hearing, and DTC reviewed a proposed legal opinion letter Atlantis submitted in an effort to lift the Global Lock. DTC permitted Atlantis to make numerous arguments regarding the TJM and E-Lionheart proceedings and the registration exemptions claimed by the defendants in those proceedings. DTC also considered and discussed with Atlantis other approaches to lift the Global Lock, including the potential of Atlantis registering its shares with the Commission. DTC engaged in ongoing discussions with Atlantis and, where relevant, the Commission staff, stating that, if Atlantis was able to register its shares, DTC would lift the Global Lock. DTC also kept a record of the communications between Atlantis and DTC after Atlantis requested a hearing.

In light of the extensive communication between DTC and Atlantis, there is no merit to Atlantis's claim that DTC denied it the requisite fair procedure by not providing a formal hearing. A formal hearing is not required to satisfy DTC's obligations under Section 17A to provide issuers such as Atlantis with an opportunity to be heard. As we stated in *IPWG*, "DTC may design such [Section 17A procedures] in accordance with its own internal needs and circumstances."[20] The approach DTC followed here differs substantially from the approach it took in *IPWG*. Under the circumstances, the procedures afforded to Atlantis here satisfied DTC's obligations under Section 17A to provide an issuer with notice and an opportunity to be heard.[21]

2. As discussed above, Section 17A(b)(5)(B) also requires that a determination to prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a "statement setting forth the specific grounds on which the denial or prohibition or limitation is based." DTC has pointed to no such statement, and we are unable to identify one in the record before us.

Indeed, DTC asserts that it did not reach a final decision. The October 26, 2012 letter from DTC's outside counsel arguably could be such a statement. That letter analyzed and rejected Atlantis's arguments that the shares at issue in the TJM and E-Lionheart Actions were exempt from registration. But DTC has not identified that letter as a final agency action and, on appeal to the Commission, argues that it made no determination, in its outside counsel's October 26, 2012 letter or elsewhere, as to the validity of the exemptions for the sales of TJM and E-Lionheart shares at issue. Our finding is further supported by DTC's assertion that, in August

---

20 *IPWG*, 2012 WL 892229, at *7 n. 36.

21 While we find that DTC provided Atlantis notice and an opportunity to be heard based on the record before us in this case, we reiterate our statement in *IPWG* that "we believe that DTC should adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly in any future such issuer cases." *IPWG*, 2012 WL 892229, at *8.

2013 (just before Atlantis filed this appeal), "DTC was prepared to continue with the discussion regarding additional procedures with respect to the restriction on Atlantis." Thus, DTC itself acknowledges that, after providing Atlantis notice and an opportunity to be heard, DTC did not provide a statement specifying the grounds for the Deposit Chill and Global Lock.

In *IPWG*, we found that issuers such as Atlantis, which are subject to a Deposit Chill or a Global Lock, are entitled to Commission review under Exchange Act Section 19(f),[22] which governs our review of an SRO's limitation with respect to access to services offered by that SRO.[23] Under Section 19(f) of the Exchange Act, we must dismiss Atlantis's appeal if we find that (i) the specific grounds on which DTC based the Deposit Chill and Global Lock exist in fact; (ii) the Deposit Chill and Global Lock were in accordance with DTC Rules; and (iii) those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act. The absence of a statement specifying the grounds for the Deposit Chill and Global Lock makes it impossible for us to exercise our statutory review authority over DTC's actions.[24] We therefore remand this proceeding to DTC.

On remand, DTC should provide a final, definitive statement setting forth the specific grounds for the Deposit Chill and Global Lock. We note that DTC Rule 5 defines an "Eligible Security" as "a Security accepted by the [DTC], in its sole discretion, as an Eligible Security. The [DTC] shall accept a Security as an Eligible Security only (a) upon a determination by the [DTC] that it has the operational capability and can obtain information regarding the Security necessary to permit it to provide its services to Participants and Pledgees when such security is Deposited and (b) upon such inquiry, or based upon such criteria, as the [DTC] may, in its sole discretion, determine from time to time." In addition, DTC's Operational Arrangements, Section 1.A.1, state, "Generally, the issues that may be made eligible for DTC's book-entry delivery and depository services are those that: (i) have been registered with the United States Securities and Exchange Commission ('SEC') pursuant to the Securities Act of 1933, as amended ('Securities Act'); (ii) are exempt from registration pursuant to a Securities Act exemption that does not involve transfer or ownership restrictions; or (iii) are eligible for resale pursuant to Rule 144A or Regulation S (and otherwise meet DTC's eligibility criteria)."

In this appeal, somewhat inconsistently with the October 26, 2012 letter, DTC contends that it "relies on the filing of an enforcement action as the basis for imposing a global lock," and that "it would be improper, both legally and from a policy perspective, to require DTC to provide a duplicative and competing forum for the issuer to litigate the same allegations asserted in the regulatory proceeding."[25] Therefore, DTC contends on appeal that it made no determination

---

[22] 15 U.S.C. § 78s(f).

[23] *IPWG*, 2012 WL 892229, at *6.

[24] *See Jonathan Feins*, Exchange Act Release No. 37091, 1996 WL 169441, at *2 (Apr. 10, 1996) ("[I]t is important that a self-regulatory organization clearly explain the bases for its conclusions. If it fails to do so, we cannot discharge properly our review function.").

[25] DTC describes the October 26, 2012 letter not as a final determination regarding the exemptions being claimed, but rather as an effort by its counsel, "in light of the Commission's

(continued...)

about the availability of the exemptions from registration claimed by Atlantis and the defendants in the TJM and E-Lionheart Actions.[26] To the extent that DTC relies on the Commission complaints in the TJM and E-Lionheart Actions as the sole basis for the Deposit Chill and Global Lock, it should explain how such a finding is consistent with DTC's Rules and Operational Arrangements and their definition of what constitutes an "eligible security."[27] While a statement is required under Section 17A, as with our finding that DTC must provide issuers with notice and an opportunity to be heard, DTC may design that statement in accordance with its own internal needs and circumstances,[28] so long as it sets forth the specific grounds on which DTC based its decision.

(...continued)
allegations in the TJM Action and the E-Lionheart Action," to explain why the offerings at issue in those proceedings might not meet the requirements for an exemption from registration claimed by the defendants in those actions.

26 This argument, however, does not release DTC from the statutory requirement that it provide a definitive final statement setting forth the grounds for its actions (which DTC acknowledges it did not do). We must base our decision on the record before us, and parties may not use arguments in briefs, such as these, and other unsworn representations to fill in gaps in the record. *Cf. SmartHeat Inc.*, Exchange Act Release No. 73555, 2014 WL 5768703, at *8 & n.27 (Nov. 6, 2014) (finding that applicant's memorandum in support of its appeal did not present an evidentiary basis on which Commission could make a factual finding); *CleanTech Innovations, Inc.*, Exchange Act Release No. 69968, 2013 WL 3477086, at *8 & n.56 (July 11, 2013) (finding that Commission cannot base its factual findings on unsworn representations made by counsel in briefs or memoranda).

27 Unlike the rules of other SROs, DTC's Rules at issue here do not expressly permit it to consider the existence of a pending regulatory action in reaching its determination. *Compare* DTC Operational Arrangements, Section 1.A.1 (defining "eligible securities" as, among other things, those that "are exempt from registration") *and* FINRA Rule 6490(d)(3) (permitting FINRA to find a Company-Related Action to be deficient if, among other reasons, "FINRA has actual knowledge that . . . officers [or] directors . . . connected to the issuer or the [Company-Related Action requested] . . . are the subject of a **pending**, adjudicated or settled regulatory action or investigation by a federal, state or foreign regulatory agency, or a self-regulatory organization; or a civil or criminal action related to fraud or securities laws violations") (emphasis added).

28 *See supra* note 20.

Accordingly, we remand the proceeding to DTC to provide a statement setting forth the specific grounds on which the Deposit Chill and Global Lock are based, as required by Exchange Act Section 17A(b)(5)(B). We do not intend to suggest any view on the outcome of this remand.

An appropriate order will issue.[29]

By the Commission (Chair WHITE and Commissioners AGUILAR, GALLAGHER, STEIN and PIWOWAR).

Brent J. Fields
Secretary

Lynn M. Powalski

By: Lynn M. Powalski
Deputy Secretary

---

29 We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75168 / June 12, 2015

Admin. Proc. File No. 3-15432

In the Matter of the Application of

ATLANTIS INTERNET GROUP CORPORATION

For Review of Action Taken by

THE DEPOSITORY TRUST COMPANY

ORDER REMANDING PROCEEDING TO REGISTERED CLEARING AGENCY

On the basis of the Commission's opinion issued this day, it is

ORDERED that this proceeding with respect to Atlantis Internet Group Corporation be, and it hereby is, remanded to The Depository Trust Company for further consideration.

By the Commission.

Brent J. Fields
Secretary

Lynn M. Powalski

By: Lynn M. Powalski
Deputy Secretary

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-75165; File No. S7-11-15

Request for Comment on Exchange-Traded Products

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Securities and Exchange Commission ("Commission") is seeking public comment on topics related to the listing and trading of exchange-traded products on national securities exchanges and sales of these products by broker-dealers.

DATES: Comments should be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/other.shtml);
- Send an e-mail to rule-comments@sec.gov, including File Number S7-11-15 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov), following the instructions for submitting comments.

Paper comments:

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC, 20549-1090.

All submissions should refer to File Number S7-11-15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (http://www.sec.gov). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC, 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Edward Cho, Special Counsel, at (202) 551-5508; Christopher Chow, Special Counsel, at (202) 551-5622; or Sarah Schandler, Special Counsel, at (202) 551-7145, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC, 20549-7010.

TABLE OF CONTENTS

I. DISCUSSION

A. Introduction

Exchange-traded products ("ETPs") constitute a diverse class of financial products that seek to provide investors with exposure to financial instruments, financial benchmarks, or investment strategies across a wide range of asset classes. ETP trading occurs on national securities exchanges and other secondary markets that are regulated by the Commission under the Securities Exchange Act of 1934 ("Exchange Act"),[1] making ETPs widely available to market participants, from individual investors to institutional investors, including hedge funds and pension funds.

The Commission approved the listing and trading of shares of the first ETP—the SPDR S&P 500 ETF ("SPY")—in 1992.[2] Since the SPY began trading on January 22, 1993, there has been enormous growth in the number, aggregate market capitalization, and variety of ETPs. The chart below depicts the growth of ETPs, both in number and market capitalization, since 1993.

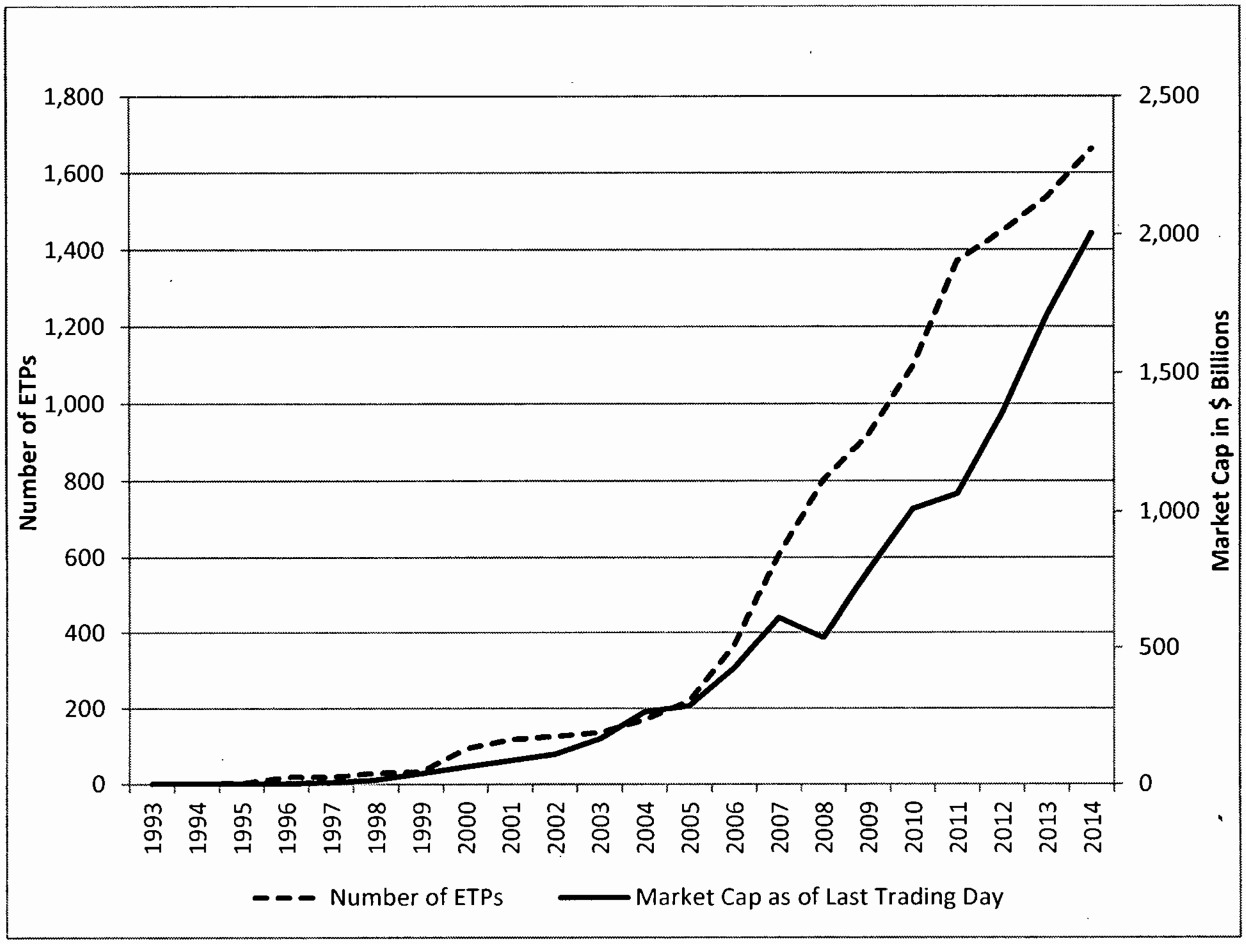
As reflected in Figure 1 (below), from 2006 to 2013, the total number of ETPs listed and traded as of year end rose by an average of 160 per year, with a net increase of more than 200 in both 2007 and 2011. By comparison, from 1993 to 2005, the total number of ETPs listed and traded as of year end rose by an average of just 17 per year, with a net increase of 60 in 2000. The total market capitalization of ETPs has also grown substantially, nearly doubling since the end of 2009. Much of this growth has been in index-based ETPs.

---

1 15 U.S.C. 78a et seq. Once listed on a national securities exchange, ETP shares also can be traded on Alternative Trading Systems (as defined in Rule 300 of Regulation ATS, 17 CFR 242.300) or in other over-the-counter transactions.

2 See Securities Exchange Act Release No. 31591 (Dec. 11, 1992), 57 FR 60253 (Dec. 18, 1992) (SR-Amex-92-18) (order approving the adoption of listing standards for Portfolio Depositary Receipts and the listing and trading of shares of SPY pursuant to those listing standards).

Figure 1: Aggregate Market Capitalization and Number of ETPs, 1993–2014[3]



As of December 31, 2014, there were 1,664 U.S.-listed ETPs, and they had an aggregate market capitalization of just over $2 trillion.[4] Trading in these ETPs makes up a significant portion of secondary-market equities trading. For example, during 2014, trading in U.S.-listed

---

[3] The figures underlying this chart were produced by an analysis by Commission staff of year-end market data obtained through subscriptions to Morningstar Direct and Bloomberg Professional services.

[4] These figures reflect an analysis by Commission staff of market data obtained through subscriptions to Morningstar Direct and Bloomberg Professional services.

ETPs made up about 16.7% of U.S. equity trading by share volume and 25.7% of U.S. equity trading by dollar volume.[5]

There has also been significant growth in the range of investment strategies that ETPs pursue. These strategies have expanded from exchange-traded funds ("ETFs") that track equity indices (such as the original SPY) to include, among other things: (i) ETPs that track other types of indices (such as those based on fixed-income securities or on derivatives contracts on commodities and currencies); (ii) actively managed ETPs that hold portfolios of equities, fixed-income instruments, foreign securities, commodities, currencies, futures, options, or other over-the-counter or exchange-traded derivatives;[6] (iii) leveraged, inverse, and inverse leveraged ETPs;[7] and (iv) ETPs employing market volatility, hedging, or options-based strategies.[8]

---

5 These figures reflect an analysis by Commission staff of market data obtained through the Commission's Market Information Data and Analytics System ("MIDAS"). The staff's analysis of MIDAS data also shows that approximately 32.4% of the trading activity (by share volume) in ETPs during 2014 took place on trading venues other than national securities exchanges, which is roughly comparable to the approximately 35.2% of share volume in all equity trading that took place off an exchange in 2014.

6 See, e.g., Securities Exchange Act Release Nos. 50603 (Oct. 28, 2004), 69 FR 64614 (Nov. 5, 2004) (SR-NYSE-2004-22) (order approving the adoption of listing standards for Equity Gold Shares and the listing and trading of shares of the streetTRACKS Gold Trust, which was subsequently renamed the SPDR Gold Trust); 60064 (June 8, 2009), 74 FR 28315 (June 15, 2009) (SR-NYSEArca-2009-30) (order granting approval for the listing and trading of shares of the iShares Diversified Alternatives Trust); 68390 (Dec. 10, 2012), 77 FR 74540 (Dec. 14, 2012) (SR-BATS-2012-042) (order granting approval for the listing and trading of shares of the Sovereign Screened Global Bond Fund); 68871 (Feb. 8, 2013), 78 FR 11238 (Feb. 15, 2013) (SR-NYSEArca-2012-138) (order granting approval for the listing and trading of shares of the PIMCO Foreign Currency Strategy Exchange-Traded Fund); 68972 (Feb. 22, 2013), 78 FR 13721 (Feb. 28, 2013) (SR-NASDAQ-2012-147) (order granting approval for the listing and trading of shares of the First Trust High Yield Long/Short ETF); 70209 (Aug. 15, 2013), 78 FR 51769 (Aug. 21, 2013) (SR-NYSEArca-2013-60) (order granting approval to list and trade shares of the Market Vectors Low Volatility Commodity ETF and Market Vectors Long/Short Commodity ETF); and 71378 (Jan. 23, 2014), 79 FR 4786 (Jan. 29, 2014) (SR-NYSEArca-2013-137) (order granting approval to list and trade shares of the Merk Gold Trust).

7 Leveraged ETPs seek to achieve performance results, over a specified period, that are a multiple or an inverse multiple of the performance of the index or benchmark they track. Inverse ETPs (also called "short" funds) seek to deliver the opposite of the performance of the index or benchmark they track. Like traditional ETPs, some leveraged and inverse ETPs track broad indices, some are sector-specific, and others are linked to commodities, currencies, or some other benchmark. See U.S. Securities and Exchange Commission, Leveraged and Inverse ETFs: Specialized Products with Extra Risks for Buy-and-Hold Investors, available at http://www.sec.gov/investor/pubs/leveragedetfs-alert.htm; see also Securities Exchange Act Release No. 52553 (Oct. 3, 2005), 70 FR 59100 (Oct. 11, 2005) (SR-Amex-2004-62) (order granting approval for the adoption of listing standards to accommodate leveraged ETFs and for the listing and trading of shares of the xtraShares Trust).

The increasing scope and complexity of ETP investment strategies in recent years have led to an increase in the number and complexity of requests by issuers for exemptive relief under the Exchange Act (to allow ETPs to be offered for sale on exchanges) and in the number and complexity of proposed rule changes filed with the Commission by exchanges seeking to establish listing standards for the securities of new ETPs. Accordingly, the Commission believes that this is an opportune time to seek public comment on topics associated with its oversight of the listing and trading of ETPs on national securities exchanges.[9]

B. The Types of ETPs

Although ETPs constitute a diverse class of financial products, for purposes of this Request for Comment they are classified into three broad categories.[10]

Exchange-Traded Funds (ETFs)

The first, and largest, category comprises ETFs, which are open-end fund vehicles or unit investment trusts that are registered as investment companies under the Investment Company Act

---

8 For example, recent ETPs have included an ETF that seeks to track the performance of the CBOE S&P 500 VIX Tail Hedge Index, see Securities Exchange Act Release No. 67485 (July 23, 2012), 77 FR 44291 (July 27, 2012) (SR-NYSEArca-2012-50); an ETF that writes covered call options on underlying ETPs that it owns, see Securities Exchange Act Release No. 67552 (Aug. 1, 2012), 77 FR 47131 (Aug. 7, 2012) (SR-NYSEArca-2012-55); an ETF that holds long and short positions in underlying ETFs and ETNs, see Securities Exchange Act Release No. 67559 (Aug. 1, 2012), 77 FR 47482 (Aug. 8, 2012) (SR-NYSEArca-2012-57); an ETF that holds a portfolio including equities, equity futures, and volatility-related instruments, see Securities Exchange Act Release No. 68158 (Nov. 5, 2012), 77 FR 67412 (Nov. 9, 2012) (SR-NYSEArca-2012-101); and an ETF that seeks to track the performance of an index of over-the-counter put options on volatile stocks, see Securities Exchange Act Release No. 69373 (Apr. 15, 2013), 78 FR 23601 (Apr. 19, 2013) (SR-NYSEArca-2012-108).

9 The Commission has previously sought comment on topics related to exchange-traded funds, most recently in 2008. See Exchange-Traded Funds, Investment Company Act Release No. 28193 (Mar. 11, 2008), 73 FR 14618 (Mar. 18, 2008) (proposed rule), available at http://www.sec.gov/rules/proposed/2008/33-8901.pdf. The Commission has not adopted the rule that was proposed in the 2008 release.

10 Recently, the Commission approved an exchange proposal to adopt rules that provide for the listing and trading of Exchange-Traded Managed Fund Shares ("ETMFs"), which would operate differently from existing ETPs. See Securities Exchange Act Release No. 73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR-NASDAQ-2014-020) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 thereto, Relating to the Listing and Trading of Exchange-Traded Managed Fund Shares) ("ETMF Approval Order"). No ETMFs are currently listed or traded on an exchange, and this Request for Comment does not therefore address their listing and trading.

of 1940 ("1940 Act").[11] Like an open-end fund, an ETF pools the assets of multiple investors and invests those assets according to its investment objective and principal investment strategies, and each share of an ETF represents an undivided interest in the underlying assets of the ETF. However, unlike open-end funds—shares of which are purchased or redeemed at the fund's current net asset value ("NAV"),[12] which is typically calculated at the end of the trading day—ETF shares may be bought or sold by investors throughout the day through a broker-dealer at a market-determined price.[13]

Non-1940 Act Pooled Investment Vehicles

The second category comprises ETPs that, generally, are trust or partnership vehicles that are not registered under the 1940 Act because they do not invest primarily in securities. Examples of ETPs in this category include those that physically hold a precious metal or that hold a portfolio of futures or other derivatives contracts on certain commodities or currencies. Offerings of securities issued by ETPs in this second category are registered only under the Securities Act of 1933 ("Securities Act")[14] and are not also registered under the 1940 Act.

Exchange-Traded Notes (ETNs)

The third category comprises exchange-traded notes ("ETNs"). ETNs are senior debt instruments issued by financial institutions, and they pay a return based on the performance of a

---

11 15 U.S.C. 80a-1 et seq.

12 The NAV of an investment company is the net value of all the assets and liabilities in the investment company's portfolio divided by the number of the shares issued by the investment company.

13 Closed-end funds are also registered 1940 Act investment companies that issue securities that are traded on an exchange, and they may pursue investment strategies similar to those of ETFs. The trading of closed-end funds differs from that of ETFs, however, in that closed-end funds do not operate with the creation and redemption mechanism that, as described below, helps to keep an ETF's market price closely tied to the value of the assets it holds. See infra at Section I.C.

14 15 U.S.C. 77a et seq.

"reference asset"—an asset, market benchmark, or other investment strategy, such as the return on the S&P 500 Index, the performance of commodities or commodity indices, or the performance of the common stock of an individual public company. Unlike the other two categories of ETPs described above, ETNs are not pooled vehicles, and they do not hold an underlying portfolio of securities, futures, over-the-counter derivatives, or other assets. Offerings of ETNs are registered under the Securities Act, and the performance of the reference assets generally determines the amount owed by the issuer of the ETN to the holder of the ETN at maturity.

Market Statistics

To provide a general overview of the distribution of market capitalization and trading volume across broad categories of ETPs, the table below shows the number of ETP products (by underlying or reference asset and by type of ETP), their aggregate market capitalization, and the total value traded as of year end 2014.

ETPs by Underlying or Reference Asset Type, as of Year End 2014[15]			
Underlying or Reference Asset or Strategy	**Number**	**Total Market Cap (Millions)**	**Total Value Traded In 2014 (Millions)**
Asset Allocation	**36**	**$7,435**	**$14,380**
ETF	34	$7,402	$14,344
ETN	2	$33	$36
Alternative Strategies	**330**	**$42,985**	**$1,952,802**
ETF	209	$31,865	$1,296,485
Non-1940 Act Pooled Investment Vehicles	25	$4,727	$142,465
ETN	96	$6,392	$513,852
Commodities	**118**	**$55,366**	**$406,728**
ETF	7	$213	$810
1940 Act Pooled Investment Vehicles	38	$50,880	$390,213
ETN	73	$4,273	$15,705
International Equity	**367**	**$380,023**	**$2,497,521**
ETF	361	$376,941	$2,495,865
ETN	6	$3,082	$1,657
Municipal Bond	**32**	**$14,273**	**$20,186**
ETF	32	$14,273	$20,186
Sector Equity	**297**	**$304,588**	**$2,782,522**
ETF	281	$293,673	$2,764,385
ETN	16	$10,915	$18,137
Taxable Bond	**217**	**$290,245**	**$1,000,086**
ETF	214	$290,219	$1,000,037
ETN	3	$26	$49
U.S. Equity	**267**	**$909,677**	**$8,581,038**
ETF	252	$907,557	$8,579,330
ETN	15	$2,119	$1,707
Grand Total	**1,664**	**$2,004,591**	**$17,255,263**

15 These figures reflect an analysis by Commission staff of market data obtained through subscriptions to Morningstar Direct and Bloomberg Professional services. Figures are as of the last trading day of 2014.

C. How Existing ETPs Function

1. Purchases, Sales, Creations, and Redemptions

Most investors in an ETP buy and sell the ETP's securities in the secondary market, at a market-determined price, with other market participants, including other investors, broker-dealers, and market makers, on the other side of the transaction. The ETP securities that are listed for trading on an exchange ("ETP Securities") are either (i) shares issued by the ETP or (ii) in the case of ETNs (which are, as noted above, debt instruments issued by a financial institution), the debt instruments themselves.

Although most investors can buy or sell ETP Securities only in the secondary market through a broker-dealer, certain large market participants, typically broker-dealers, can become authorized participants ("Authorized Participants") with respect to most ETPs.[16] Each Authorized Participant enters into a contractual relationship with the ETP issuer that allows it to engage in purchases and redemptions of ETP Securities directly with that issuer.

For almost all ETPs,[17] the issuance and redemption of ETP Securities operates in essentially the same manner.[18] ETPs generally issue ETP Securities only in large aggregations or blocks (for example, 50,000 ETP shares) called creation units ("Creation Units"). Most ETPs are structured so that an Authorized Participant will purchase a Creation Unit with a portfolio deposit ("Portfolio Deposit"), which is a basket of assets (and sometimes cash) that generally

---

16 ETNs, as credit instruments issued by a financial institution, do not have Authorized Participants.

17 ETNs may or may not be redeemable, and they employ different calculations and procedures to issue and redeem ETN units based on the value or performance of the underlying reference asset or benchmark. The issuance and redemption process for ETNs is generally performed by institutional investors, as issuers require issuance or redemption to occur in large blocks of ETNs (e.g., 25,000 to 50,000 ETNs). ETNs are issued and redeemed (where redeemable) solely for cash.

18 Some ETPs, however, do not permit regular creations after the initial public offering of the ETP, allowing only ETP redemptions. See, e.g., Securities Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca 2012-18) (APMEX Physical–1 oz. Gold Redeemable Trust).

reflects the composition of the ETP's portfolio.[19] The ETP makes public the contents of the Portfolio Deposit before the beginning of the trading day.[20] Because the purchase price of a Creation Unit and its aggregate NAV must be equal, an amount of cash will be exchanged between the Authorized Participant and the ETP at the time of purchase when necessary to balance the value of the Portfolio Deposit with that of the Creation Unit. After purchasing a Creation Unit, an Authorized Participant may hold the ETP Securities or sell (or lend) some or all of them to investors in the secondary market.

Similarly, for most ETPs, when an Authorized Participant wishes to redeem ETP Securities, it presents a Creation Unit to the ETP for redemption and receives in return a redemption basket ("Redemption Basket"), the contents of which are made public by the ETP before the beginning of the trading day. The Redemption Basket (which is usually, but not always, the same as the Portfolio Deposit) typically consists of securities or commodities and a small amount of cash.[21] As with purchases from the ETP, redemptions to the ETP are priced at NAV,[22] and an amount of cash will be exchanged when necessary to balance the value of the Redemption Basket with that of the Creation Unit.

When creation and redemption transactions occur wholly or partly "in kind"—in other words, when securities constituting the ETP's portfolio are exchanged for ETP Securities and vice versa—certain benefits can accrue to the ETP and its investors. In-kind exchanges generally

---

19 Some issuers may allow or require Creation Units to be created for cash only.

20 In most cases, ETPs publish the contents of their Portfolio Deposit through the National Securities Clearing Corporation ("NSCC"). The NSCC provides its members with several methods to access this information. See http://www.dtcc.com/clearing-services/equities-trade-capture/etf.aspx.

21 Some issuers may allow or require cash-only Redemption Baskets.

22 Certain ETPs that hold physical commodities and are not ETFs redeem Creation Units, at the Authorized Participant's option, either for commodities with a value equal to the NAV of the Creation Unit or for cash at less than the NAV of the Creation Unit. See, e.g., Securities Exchange Act Release No. 66930, supra note 18.

result in lower trading expenses (because securities received or delivered in kind do not need to be purchased or sold in the market by the ETP, thus avoiding brokerage fees) and lower taxable gains to shareholders (because appreciated securities are not sold but are delivered in kind to redeeming Authorized Participants).

2. Arbitrage Between an ETP's Market Price and its NAV

Because of the creation and redemption mechanisms, most existing ETPs present market participants, including Authorized Participants, market makers, and institutional investors, with opportunities to engage in arbitrage, which generally helps to prevent the market price of ETP Securities from diverging significantly from the value of the ETP's underlying or reference assets.[23] Although most ETPs calculate and disseminate their official NAV only once per day as of the close of regular trading hours, market participants can use other methods during the trading day to calculate or approximate the value of the assets underlying or referenced by a share of an ETP.[24]

For example, exchange listing standards require every currently traded, actively managed ETP to make daily disclosure of its entire portfolio.[25] Current exchange listing standards do not require similar disclosures for index-based ETPs, but the make-up and value of the underlying indices are widely available, and most index-based ETPs, as a matter of practice, make daily disclosure of their portfolios. With this information, market participants can access pricing data

---

[23] Arbitrage for ETNs may operate differently from that for other existing ETPs, because the in-kind creation and redemption process for most ETPs differs from the cash-only issuance and redemption process for ETNs. The Commission seeks comment on the operation of arbitrage for ETNs. See infra at Section II.A (Question 8).

[24] ETNs do not calculate a NAV because they do not hold an underlying portfolio of assets. See supra Section I.B. See also infra note 26.

[25] See, e.g., NYSE Arca Equities Rule 8.600(d)(2)(B)(i). An actively managed ETP does not seek to track the return of a particular securities index. Instead, an actively managed ETP's investment adviser selects investments designed to meet a particular investment objective or policy.

about an ETP's portfolio assets and perform their own calculations of the per-share value of that portfolio.

In addition, exchange listing standards require existing ETPs to publicly disseminate during the trading day an intraday indicative value ("IIV"), which is designed to provide investors with information on the value of the investments held by the ETP (or, in the case of an ETN, the reference assets).[26] The IIV is typically calculated and disseminated at least every 15 seconds during the trading day and is typically disseminated over the Consolidated Tape or via an exchange data feed. The IIV may or may not be based on the entire portfolio held by an ETP, and it may or may not be equal to the per-share value of an ETP's underlying portfolio or reference assets.[27]

A simplified example of "riskless" arbitrage will help to clarify how the arbitrage process for existing ETPs is intended to work. If the shares of an ETP that uses an in-kind creation and redemption process begin to trade at a discount to the value of the underlying portfolio at any point during the trading day, arbitrageurs can capture this difference (minus expenses) by: (i) purchasing ETP Securities in the secondary market in an amount equal to a Creation Unit

---

26 See, e.g., NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(c). The IIV is also referred to as an "Indicative Optimized Portfolio Value," "Intraday Value," or "Portfolio Indicative Value." Most ETN issuers also make publicly available on their websites or through third-party vendors a value called the closing indicative value, which is determined as of the close of each trading day. The closing indicative value, in contrast to the intraday indicative value, represents the value of the ETN at that point in time and is used to calculate the amounts due to investors at maturity or on redemption.

27 For example, the IIV for some ETPs is based on the current value of the securities or cash required to be deposited in exchange for a creation unit, which may differ from the composition of portfolio holdings on any given day. See, e.g., Securities Exchange Act Release No. 67320 (June 29, 2012), 77 FR 39763 (July 5, 2012) (SR-NYSEArca-2012-44) (order granting approval for the listing and trading of shares of the iShares Strategic Beta U.S. Large Cap Fund and iShares Strategic Beta U.S. Small Cap Fund). The IIV for certain other ETPs is based on the current value of some, but not all, assets held in the investment portfolio. See, e.g., Securities Exchange Act Release No. 61881 (Apr. 9, 2010), 75 FR 20028 (Apr. 16, 2010) (SR-NYSEArca-2010-14) (order granting approval to list and trade partnership units of the United States Brent Oil Fund, LP, a commodity pool that seeks to track changes in Brent crude oil futures traded on the ICE Futures Exchange and that calculates and disseminates an IIV based solely on these futures contracts, excluding other crude-oil-related investments held in the portfolio).

while simultaneously selling short the securities or commodities in the Redemption Basket; (ii) redeeming the Creation Unit with the ETP at the end-of-day NAV (either as an Authorized Participant or through a relationship with an Authorized Participant), thereby receiving the securities or commodities in the Redemption Basket; and (iii) using the contents of the Redemption Basket to close out the arbitrageur's short position. Purchasing the ETP Securities and selling short the securities or commodities in the Redemption Basket also apply market pressure that tends, all other things being equal, to bring the ETP Security's market price closer to the value of the underlying portfolio assets.

Similarly, if the shares of this same ETP begin to trade at a premium to the value of the underlying portfolio, arbitrageurs may profit by: (i) selling short the ETP Securities; (ii) purchasing the securities or commodities that make up the Portfolio Deposit; (iii) exchanging the Portfolio Deposit for a Creation Unit through an Authorized Participant; and then (iv) using the ETP Securities in the Creation Unit to close out the short position. Again, the sales of the ETP Securities and the purchases of the contents of the Portfolio Deposit apply market pressure that tends, all other things being equal, to bring the price of the ETP Securities closer to the value of the underlying portfolio assets.

Market participants can also engage in arbitrage activities that do not necessarily require them to engage in creations or redemptions. For example, if a market participant believes that an ETP is overvalued relative to its underlying or reference assets, the market participant may sell ETP Securities; buy the underlying or reference assets; and, if the trading prices move toward parity, close out the positions in both the ETP Securities and the underlying or reference assets. The market participant would thereby realize a profit from the relative movement of those trading prices without engaging in an ETP creation. Similarly, a market participant could buy

ETP Securities and sell the underlying or reference assets in an attempt to profit when an ETP Security is trading at a discount to its underlying or reference assets. As discussed above, the trading of an ETP Security and its underlying or reference assets applies market pressure that may bring the prices of the ETP Security and those assets closer together.

D. The Commission's Oversight of Exchange-Traded Products[28]

Before ETP Securities can be listed and traded on a national securities exchange, those securities and their issuer must comply with, or obtain exemptions from, several provisions of the securities laws. First, as with other securities, the offer and sale of ETP Securities must be registered under the Securities Act.[29] In addition, in the case of ETFs, certain relief from the requirements of the 1940 Act is necessary,[30] because ETFs differ from other open-end

---

28 In addition to the exemptive or no-action relief provided with respect to the Exchange Act rules and regulations described infra, in 1998 and 1999 the Commission's staff provided no-action relief under Section 13(d) of the Exchange Act, 15 U.S.C. 78m(d), and Section 16(a) of the Exchange Act, 15 U.S.C. 78p(a), to certain funds registered under the 1940 Act with respect to the required filing of ownership reports by insiders and five percent beneficial owners of the shares of the ETFs. See Letter from James J. Moloney, Division of Corporation Finance, and Evan Geldzahler, Division of Investment Management, Securities and Exchange Commission, to Sam Scott Miller, Orrick, Herrington & Sutcliffe LLP, 1998 SEC No.-Act. LEXIS 1050 (Dec. 14, 1998) (providing no-action relief under Section 13(d) of the Exchange Act); Letter from Anne M. Krauskopf, Division of Corporation Finance, and Evan Geldzahler, Division of Investment Management, Securities and Exchange Commission, to Stuart M. Strauss, Gordon, Altman, Butowsky, Weitzen, Shalov & Wein, 1999 SEC No-Act. LEXIS 500 (May 6, 1999) ("Select Sector SPDR Trust Letter") (providing no-action relief under Section 16(a) of the Exchange Act). This no-action relief was based, in large part, on the representation that the trading prices of the ETFs did not deviate materially from their NAV. See id. Having stated its views on whether insiders and five percent beneficial owners of ETPs must file ownership reports under Sections 16(a) and 13(d) of the Exchange Act, the Division staff stated that it would not respond to further requests for no-action relief in this area unless the request presented a "novel or unusual issue." See Select Sector SPDR Trust Letter, 1999 SEC No-Act. LEXIS 500, *9.

29 For ETPs that are not registered under the 1940 Act, offerings of ETP Securities require the filing of a registration statement on Form S-1 or Form S-3, depending on the issuer. Depending on the form type used to register the offering, the staff of the Division of Corporation Finance may review the disclosures included in the registration statement and may issue comments. ETN offerings in many cases are made through takedowns off of effective shelf registration statements. For ETFs registered under the 1940 Act, offerings require the filing of a registration statement on Form N-1A. The staff of the Division of Investment Management reviews the information disclosed in the Form N-1A and may issue comments requesting that the issuer revise or expand its disclosures before the registration statement becomes effective.

30 For an ETF to operate, it must first obtain an order under Section 6(c) of the 1940 Act for an exemption from Sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the 1940 Act and from Rule 22c-1 thereunder, and under Sections 6(c) and 17(b) for an exemption from Sections 17(a)(1) and 17(a)(2) of the 1940 Act.

investment companies in that they issue and redeem shares only in Creation Units and their shares trade in the secondary market at market prices.

While ETPs are governed by various provisions of the securities laws, including the Securities Act and, in certain cases, the 1940 Act, the focus of this Request for Comment is on the listing of ETP Securities on an exchange and the trading of ETP Securities on exchanges and other venues. Therefore, in issuing this Request for Comment, the Commission seeks public comment relating specifically to the oversight of ETPs under the provisions of the Exchange Act and the rules thereunder, including both (i) the exemptive and no-action relief granted to ETPs under the Exchange Act and (ii) the requirement that a national securities exchange have Commission-approved listing standards applicable to the ETP Securities being traded.

1. Exchange Act Exemptive and No-Action Relief for Existing ETPs

The trading of ETP Securities on an exchange generally will require that the issuer obtain exemptive or no-action relief from various provisions of, or rules promulgated under, the Exchange Act. As explained more fully below, the normal operation of an ETP would usually violate these provisions absent relief.

a. Regulation M

Regulation M proscribes certain activities that may increase a security's offering price (and so increase the offering proceeds); stabilize the market price of an offered security in order to avoid a price decline during the sales period or in the immediate aftermarket; or induce or attempt to induce prospective investors to buy in the aftermarket.[31] Rules 101 and 102 of Regulation M generally prohibit distribution participants, issuers, selling security holders, and

[31] See Amendments to Regulation M: Anti-Manipulation Rules Concerning Securities Offerings, Securities Exchange Act Release No. 50831 (Dec. 9, 2004), 69 FR 75774 (Dec. 17, 2004) (S7-41-04) (proposed rule).

their affiliated purchasers from purchasing, bidding for, or attempting to induce others to purchase or bid for covered securities during the restricted period of a distribution of securities.[32] Because most ETPs are in continuous distribution, meaning that they are continually creating and distributing new securities, this restricted period usually extends indefinitely.[33] Absent relief, the purchase of ETP Securities by an Authorized Participant (who would be considered a distribution participant), or by the issuer in the redemption process, would violate Rules 101 and 102 of Regulation M.

When it has granted relief with respect to Regulation M, the Commission has relied upon representations from ETPs that the continuing existence of effective and efficient arbitrage mechanisms help ensure that the secondary market price of ETP Securities does not vary substantially from the ETP's NAV or underlying index value.[34] The relief is based in part on an ETP issuer's representation that the continuing existence of effective and efficient arbitrage mechanisms makes it difficult to manipulate distributions of ETP Securities. Relief for classes of ETPs relies on similar bases.[35] The consideration of effective and efficient arbitrage mechanisms

---

32 17 CFR 242.101 and 242.102. See also 17 CFR 242.100 (defining "distribution participants," "selling security holder," "affiliated purchaser," and other terms for purposes of Regulation M). In addition to being promulgated under the Exchange Act, Rules 101 and 102 of Regulation M are also promulgated under the Securities Act and under the 1940 Act. See Anti-Manipulation Rules Concerning Securities Offerings, Securities Exchange Act Release No. 38067 at n. 10 (Dec. 20, 1996), 62 FR 520, 521 n. 10 (Jan. 3, 1997) (S7-11-96).

33 See 17 CFR 242.100 (definition of "Restricted Period").

34 See, e.g., Letter from W. John McGuire, Morgan, Lewis & Bockius LLP, to Josephine Tao, Division of Trading and Markets, Securities and Exchange Commission, re: AdvisorShares Trust Actively-Managed ETF WCM/BNY Mellon Focused Growth ADR (June 18, 2010) (representing that a close alignment between market price and NAV is expected for the relevant ETP due in part to an effective and efficient arbitrage mechanism), available at http://www.sec.gov/divisions/marketreg/mr-noaction/2010/advisorshares061810.pdf. See also Letter from Josephine Tao, Division of Trading and Markets, Securities and Exchange Commission, to W. John McGuire, Morgan, Lewis & Bockius LLP, re: AdvisorShares Trust Actively-Managed ETF WCM/BNY Mellon Focused Growth ADR (June 18, 2010), available at http://www.sec.gov/divisions/marketreg/mr-noaction/2010/advisorshares061810.pdf.

35 See Letter from James A. Brigagliano, Division of Trading and Markets, Securities and Exchange Commission, to Stuart M. Strauss, Clifford Chance US LLP, re: Class Relief for Exchange Traded Index Funds

for purposes of Regulation M, and the Commission's overall consideration of ETPs, can take into account not only the end-of-day differences between an ETP Security's closing market price and the ETP's NAV, but also any intra-day premiums or discounts between the secondary market price of an ETP Security and the value of its underlying portfolio or reference assets.

In granting relief, the Commission also has relied on representations by ETP issuers that the characteristics of their proposed ETPs will mitigate against the types of abuses that Regulation M is intended to address.[36] In the case of ETFs, for example, this includes representations that the shares are issued by an open-end investment company or unit investment trust registered with the Commission under the 1940 Act and that the index underlying an index-based ETP has at least 20 different component securities to promote sufficient diversification. It also includes representations that those components have publicly available trade information, to facilitate the availability of sufficient information for arbitrage.[37]

b. Exchange Act Section 11(d)(1) and Rule 11d1-2

Section 11(d)(1) of the Exchange Act generally prohibits a broker-dealer from extending or maintaining credit, or arranging for the extension or maintenance of credit, on shares of new-issue securities if the broker-dealer participated in the distribution of the new-issue securities within the preceding 30 days.[38] The Commission's view is that, because ETP Securities are distributed in a continuous manner, broker-dealers that sell these securities are thereby

---

(Oct. 24, 2006) ("Equity Index-Based ETF Letter") (noting that relief is only appropriate when the secondary market price of the ETF's shares does not vary substantially from NAV), available at http://www.sec.gov/divisions/marketreg/mr-noaction/etifclassrelief102406-msr.pdf.

36 See supra note 31 and accompanying text.

37 See, e.g., Equity Index-based ETF Letter, supra note 35. Broadly speaking, ETP sponsors seeking relief make the same representations as those made by similar products that have previously been granted relief.

38 15 U.S.C. 78k(d)(1).

participating in the "distribution" of a new issue for purposes of Section 11(d)(1).[39] Further, if an ETF held a portfolio composed solely or largely of newly issued securities, there is a risk that Authorized Participants—rather than lending on, or arranging for lending on, the newly issued securities directly—could use the ETF structure to avoid the new-issue lending restriction.

The Commission has granted ETP issuers exemptions from, and the staff has issued no-action positions regarding, Section 11(d)(1) in circumstances in which these evasion concerns are reduced because: (i) the portfolio is sufficiently diversified that evasion becomes impractical;[40] (ii) the portfolio is composed of securities that are not subject to Section 11(d)(1) (e.g., government securities);[41] or (iii) the portfolio is not composed of securities at all (e.g., the product is an ETP that invests in commodities).[42]

---

39 See, e.g., Letter from Catherine McGuire, Division of Trading and Markets, Securities and Exchange Commission, to Securities Industry Association (Nov. 21, 2005), available at http://www.sec.gov/divisions/marketreg/mr-noaction/sia112105.htm.

40 See, e.g., Letter from Catherine McGuire, Division of Trading and Markets, Securities and Exchange Commission, to Securities Industry Association (Nov. 21, 2005) (conditionally exempting from Section 11(d)(1) an ETF that consists of a basket of twenty or more component securities, with no one component security constituting more than 25% of the total value of the ETF), available at http://www.sec.gov/divisions/marketreg/mr-noaction/sia112105.htm; Letter from Joseph Furey, Division of Trading and Markets, Securities and Exchange Commission, to W. John McGuire, Morgan, Lewis & Bockius LLP, re: AdvisorShares Madrona & Meidell ETFs (June 16, 2011) ("Madrona & Meidell Letter") (providing conditional staff no-action relief to ETFs whose portfolios consist of other diversified ETFs), available at http://www.sec.gov/divisions/marketreg/mr-noaction/2011/advisorsharesmadrona061611.pdf.

41 See, e.g., Letter from James A. Brigagliano, Division of Market Regulation, Securities and Exchange Commission, to Richard F. Kadlick, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, re: MACRO Securities Depositor, LLC (Dec. 22, 2006) ("MACRO Securities Depositor Letter") (providing conditional staff no-action relief), available at http://www.sec.gov/divisions/marketreg/mr-noaction/macro122206-11d1.pdf.

42 See, e.g., Letter from James A. Brigagliano, Division of Market Regulation, Securities and Exchange Commission, to Michael Schmidtberger, Sidley Austin Brown & Wood LLP, re: DB Commodity Index Tracking Fund (Jan. 19, 2006) ("DB Commodity Index Tracking Fund Letter") (providing conditional staff no-action relief), available at http://www.sec.gov/divisions/marketreg/mr-noaction/commodityidxtf011906.htm.

c. Exchange Act Rule 10b-10

Rule 10b-10 under the Exchange Act[43] requires broker-dealers to provide their customers with certain disclosures at or before the completion of a securities transaction, including the identity, price, and number of shares or units (or principal amount) of the security purchased or sold. As described above, ETP Securities are issued and redeemed only in Creation Units of a minimum size, and a Portfolio Deposit or Redemption Basket may comprise dozens or hundreds of securities. Because it would be administratively burdensome for broker-dealers to provide transaction confirmations for each security in a Portfolio Deposit or Redemption Basket, the Commission has issued exemptive relief from Rule 10b-10 to permit broker-dealers to omit this information with respect to ETPs, provided that (i) the Creation Unit is sufficiently large (at least 25,000 shares and $500,000), (ii) it is probable that creation and redemption transactions are entered into only by sophisticated investors, and (iii) the broker-dealer provides the omitted confirmation information to customers upon request.[44]

d. Exchange Act Rule 10b-17

Rule 10b-17 under the Exchange Act generally requires issuers to give notice 10 days in advance of certain specified actions (e.g., a dividend distribution, stock split, or rights offering) relating to their securities, in accordance with the procedures laid out in the rule.[45] Generally this rule is relevant to an ETP when it must distribute cash—for example, income from fixed-income holdings or cash from a realized investment gain—to its shareholders. Because some ETP Securities are continuously being issued or redeemed, issuers have represented that it is

---

43 17 CFR 240.10b-10.

44 See, e.g., Letter from Catherine McGuire to Securities Industry Association, supra note 40.

45 17 CFR 240.10b-17.

impractical to project, and to provide, some of the information required by Rule 10b-17 ten days in advance.[46] According to these issuers, particularly difficult are the requirements for the issuer to disclose (i) in the case of a distribution in cash, the amount of cash to be paid or distributed per share, and (ii) in the case of a distribution in the same security, the amount of the securities outstanding immediately before and immediately after the dividend or distribution and the rate of the dividend or distribution.[47]

When the Commission has granted exemptions to permit these distributions to occur without ETP issuers providing 10-day advance notice of the two items of information noted above, this relief has been conditioned on the issuer providing the two items of information to the national securities exchange on which the ETP Securities are registered (pursuant to Section 12 of the Exchange Act) as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time (on the day before the ex-dividend date) the exchange last accepts information relating to distributions.[48] The Commission has granted these exemptions because, other than receiving a delayed notice of these two items of information, market participants will have timely notice of the existence and timing of a pending distribution, as required by Rule 10b-17.[49] Further, under the terms of the exemption, the timing of the availability of the two items of information should allow market participants time to update their

---

46 See e.g., Letter from Jeremy Senderowicz, Dechert LLP, to Josephine Tao, Division of Trading and Markets, Securities and Exchange Commission, re: ALPS ETF Trust, ALPS/GS Momentum Builder Growth Markets Equities and U.S. Treasuries Index ETF, ALPS/GS Momentum Builder Multi-Asset Index ETF, and ALPS/GS Momentum Builder Asia Ex-Japan Equities and U.S. Treasuries Index ETF (Dec. 18, 2012), available athttp://www.sec.gov/rules/exorders/2012/34-68459-letter.pdf.

47 These disclosures are required by 17 CFR 240.10b-17(b)(1)(v)(a) and (b).

48 See, e.g., Order Granting a Limited Exemption from Exchange Act Rule 10b-17, Securities Exchange Act Release No. 67215 (June 19, 2012), 77 FR 37941 (June 25, 2012) (TP-11-07) ("10b-17 Actively Managed ETP Exemption").

49 See id.

systems to reflect the accurate price of the ETP Securities before trading begins on the ex-dividend date.[50]

e. Exchange Act Rule 14e-5

Rule 14e-5 under the Exchange Act[51] is designed to prevent the manipulation of tender offers. In particular, Rule 14e-5 prohibits "covered persons"[52] from purchasing or arranging to purchase any securities subject to a tender offer except as part of that tender offer.[53] This prohibition is in effect from the announcement of the tender offer until the expiration of the tender offer. An Authorized Participant acting as the dealer-manager of a tender offer for a component security is a covered person for purposes of Rule 14e-5.[54]

The Commission has granted relief to various entities with respect to the application of Rule 14e-5 so that Authorized Participants may redeem Creation Units and purchase ETP Securities even though component securities may be subject to a Rule 14e-5 restricted period.[55]

---

50 See id.

51 17 CFR 240.14e-5.

52 For purposes of Exchange Act Rule 14e-5, a "covered person" is defined as: (i) the offeror and its affiliates; (ii) the offeror's dealer-manager and its affiliates; (iii) any advisor to any of the persons specified in (i) or (ii) whose compensation is dependent on the completion of the offer; and (iv) any person acting, directly or indirectly, in concert with any of the persons specified in (i), (ii), or (iii) in connection with any purchase or arrangement to purchase the securities or any related securities. See 17 CFR 240.14e-5(c)(3).

53 Rule 14e-5 is designed to protect investors by preventing an offeror from extending greater or different consideration to some security holders outside the offer, while other security holders are limited to the offer's terms, and by ensuring that large security holders do not demand greater consideration. See Securities Exchange Act Release No. 8712 (Oct. 8, 1969), 34 FR 15838 (Oct. 15, 1969) (order adopting Rule 10b-13, which was later redesignated as Rule 14e-5 in Securities Exchange Act Release No. 42055 (Oct. 22, 1999), 64 FR 61408 (Nov. 10, 1999)). In addition, Rule 14e-5 prevents purchases outside the offer that, depending on the conditions in the market and the nature of the purchases, may be fraudulent or manipulative in nature, such as purchases that are used to defeat a tender offer by driving the market price above the offer price or by otherwise reducing the number of shares tendered below the stated minimum. See id.

54 See 17 CFR 240.14e-5(c)(3)(ii).

55 See, e.g., Equity Index-Based ETF Letter, supra note 35, at 6. The entities to which relief has been granted include open-end investment companies that issue ETP Securities, the listing exchange and any other national

ETP issuers generally seek relief on the basis that: (i) acquiring individual securities held by an ETP through redemptions of the ETP's securities would be impractical and inefficient; (ii) facilitating a tender offer in a particular security included in a Portfolio Deposit by means of purchasing all of the specific portfolio securities constituting the Portfolio Deposit would be inefficient; and (iii) applying the Rule 14e-5 prohibition would impede the valid and useful market and arbitrage activity that would assist secondary market trading and improve the pricing efficiency of ETP Securities.[56] Moreover, the issuers generally represent that the type of trading described above does not result in the abuses that Rule 14e-5 was designed to prevent.[57] As a condition of the relief that has been issued, the issuer of ETP Securities generally also represents that the purchases or redemptions would not, in fact, be used to facilitate a tender offer.

f. Exchange Act Rules 15c1-5 and 15c1-6

Rule 15c1-5 under the Exchange Act[58] requires a broker-dealer to disclose to its customers if it has a control relationship with an issuer prior to a customer's purchase or sale of the issuer's securities. Rule 15c1-6 under the Exchange Act[59] requires a broker-dealer to disclose to its customer, at or before the completion of a transaction, that the broker-dealer is participating in the primary or secondary distribution of the securities that it is selling or purchasing for the customer's account. Because applying these rules to all the securities in a creation or redemption

---

securities exchange on or through which the ETP Securities may subsequently trade, and persons or entities engaging in transactions in ETP Securities.

56 See, e.g., Letter from W. John McGuire, Bingham McCutchen LLP, to Michele M. Anderson and David Orlic, Division of Corporation Finance, Securities and Exchange Commission, re: SSgA Active ETF Trust (July 3, 2013), available at http://www.sec.gov/divisions/corpfin/cf-noaction/2013/ssga-active-etf-trust-14e5.pdf.

57 See supra note 53.

58 17 CFR 240.15c1-5.

59 17 CFR 240.15c1-6.

transaction would be administratively burdensome for broker-dealers, and because creations and redemptions are consummated at prices that are fixed by the ETP, there appears to be little potential for a broker-dealer to manipulate the price of the securities in the creation and redemption transactions.[60] Therefore, the staff has stated that it will not recommend enforcement action to the Commission with respect to Authorized Participants' compliance with Rules 15c1-5 and 15c1-6 in creation and redemption transactions if a broker-dealer executes transactions in shares of "Qualifying ETFs" without disclosing any control relationship with an issuer of a security in the Portfolio Deposit or Redemption Basket.[61] The staff has similarly stated that it will not recommend enforcement action if a broker-dealer executes transactions in shares of Qualifying ETFs without disclosing its participation or interest in a primary or secondary distribution of a security included within the Portfolio Deposit or Redemption Basket.[62]

---

60 See, e.g., Letter from Catherine McGuire to Securities Industry Association, supra note 40.

61 A "Qualifying ETF" was initially limited to an ETF meeting certain conditions, including that it is issued by an open-end investment company or unit investment trust registered with the Commission under the 1940 Act; that it is listed and traded on a national securities exchange; that it comprises twenty or more diversified component securities, with no one component security constituting more than 25% of the total value of the ETF; and that it is managed to track a particular index, all components of which are publicly available. Id. Subsequent staff no-action positions have provided no-action relief to more ETPs with respect to treatment as Qualifying ETFs. See, e.g., DB Commodity Index Tracking Fund Letter, supra note 42 (certain commodity-based exchange-traded trusts); MACRO Securities Depositor Letter, supra note 41 (an ETP holding government securities); Letter from Brian A. Bussey, Division of Trading and Markets, Securities and Exchange Commission, to W. Thomas Conner and Eric C. Freed, Sutherland Asbill & Brennan LLP, re: Ameristock ETF Trust (June 29, 2007) (certain fixed income ETFs), available at http://www.sec.gov/divisions/marketreg/mr-noaction/2007/ameristock062907-msr.pdf; Letter from James A. Brigagliano, Division of Trading and Markets, Securities and Exchange Commission, to Kathleen H. Moriarty, Carter, Ledyard & Milburn, re: Proshares Trust (Jan. 24, 2007) (certain ETFs tracking a multiple, inverse, or multiple inverse of an index), available at http://www.sec.gov/divisions/marketreg/mr-noaction/2007/proshares012407-msr.pdf; Letter from Josephine J. Tao, Division of Trading and Markets, Securities and Exchange Commission, to Richard F. Morris, Deputy General Counsel, WisdomTree Asset Management, Inc. (May 9, 2008) (certain actively-managed ETFs not tied to an index), available at http://www.sec.gov/divisions/marketreg/mr-noaction/2008/wisdomtree050908-msr.pdf; and Madrona & Meidell Letter, supra note 40 (certain ETFs whose portfolios consist of other diversified ETFs).

62 Id.

g. Class Relief

In connection with the application of the Exchange Act provisions described above, the Commission has issued a number of "class" exemptions to the trading of ETP Securities.[63] Class exemptions for ETPs from the Exchange Act provisions discussed above are generally issued only if the Commission and the staff have had experience with individual exemptions and no-action positions and have determined that class relief is appropriate.[64] In the case of exemptions, the Commission must also determine that a class exemption meets the statutory standard of being necessary or appropriate in the public interest and consistent with the protection of investors.[65] An ETP relying on a class exemption or no-action position must meet all of the conditions of the relevant Commission order or staff letter for the life of the product (or until the relief is no longer necessary), just as if the ETP had obtained its own individual relief. Class exemptions or no-action positions have been issued for equity index-based ETFs,[66] commodity-based investment vehicles that are not registered under the 1940 Act,[67] fixed-income index-based ETFs,[68]

---

63 See, e.g., Equity-Index Based ETF Letter, supra note 35.

64 See Letter from Catherine McGuire to Securities Industry Association, supra note 40.

65 See 15 U.S.C. 78mm(a)(1).

66 See Equity Index-Based ETF Letter, supra note 35.

67 See Letter from Racquel L. Russell, Division of Trading and Markets, Securities and Exchange Commission, to George T. Simon, Foley & Lardner LLP, re: CurrencyShares British Pound Sterling Trust et al. (June 21, 2006), available at http://www.sec.gov/divisions/marketreg/mr-noaction/currencyshares062106-10a1.pdf.

68 See Letter from James A. Brigagliano, Division of Trading and Markets, Securities and Exchange Commission, to Benjamin J. Haskin, Willkie Farr & Gallagher LLP, re: Class Relief for Fixed Income ETFs (Apr. 9, 2007), available at http://www.sec.gov/divisions/marketreg/mr-noaction/2007/fietfclassrelief040907-msr.pdf.

"combination" index-based ETFs,[69] ETNs,[70] and actively-managed ETFs.[71] These orders and no-action positions cover a number of the Exchange Act rules and regulations described above.[72]

2. Exchange Listing Standards and the Rule 19b-4 Process

Before ETP Securities can trade on a national securities exchange, that exchange must agree to list the ETP Securities for trading on its market, and it must have Commission-approved initial and continued listing standards that permit listing of that type or "class" of ETP Security.[73] ETP listing standards can be broadly categorized as either generic or non-generic.

Generic listing standards permit an exchange to list and trade specific ETP Securities of a broader class of ETPs without filing a product-specific proposed rule change with the Commission.[74] When listing ETP Securities in this way, however, exchanges are required to file a notice with the Commission within five business days after trading commences.[75] Examples of

---

69 See Letter from Josephine Tao, Division of Trading and Markets, Securities and Exchange Commission, to Domenick Pugliese, Paul, Hastings, Janofsky and Walker LLP, re: Combination ETFs (June 27, 2007), available at http://www.sec.gov/Archives/edgar/vprr/07/9999999997-07-047147.

70 See, e.g., Letter from Josephine Tao, Division of Trading and Markets, Securities and Exchange Commission, to Arthur S. Long, Davis Polk & Wardwell LLP, re: Deutsche Bank AG ETNs (Oct. 12, 2007) ("ETN No-action Letter"), available at http://www.sec.gov/divisions/marketreg/mr-noaction/2007/dbab101207.pdf.

71 See 10b-17 Actively Managed ETP Exemption, supra note48, and Division of Trading and Markets: Staff Legal Bulletin No. 9 "Frequently Asked Questions About Regulation M" (as revised Sep. 10, 2010) (regarding Regulation M), available at http://www.sec.gov/interps/legal/mrslb9.htm.

72 See supra Sections I.D.1.a through I.D.1.f.

73 See 15 U.S.C. 78s(b) and 17 CFR 240.19b-4. The Exchange Act also permits an exchange to trade a security that is listed on another exchange. The non-listing exchange that trades the security is said to extend "unlisted trading privileges" (or "UTP") to the security. See Section 12(f) of the Exchange Act, 15 U.S.C. 78l(f); Exchange Act Rule 12f-5 (17 CFR 240.12f-5) (providing that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP).

74 See 17 CFR 240.19b-4(e)(1). In 1998, the Commission issued a final rule setting forth the standards under which exchanges can list and trade "new derivatives securities products" (a category that encompasses ETPs) under "generic listing standards." See Amendments to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) (S7-13-98).

75 See 17 CFR 240.19b-4(e)(2)(ii). The required notice is filed on Form 19b-4(e). 17 CFR 249.820.

ETP classes for which generic listing standards exist include what are commonly called index-based ETFs (which the exchanges' rules call Investment Company Units, Index-Fund Shares, Portfolio Depositary Receipts, or security-based Trust Issued Receipts), and certain ETNs (which the exchanges' rules call Index-Linked Securities or Linked Securities).[76]

Generic ETP listing standards approved by the Commission contain quantitative criteria with respect to components included in the ETP's underlying or reference index or benchmark. With respect to underlying indices, these quantitative criteria provide minimum thresholds regarding trading volume, market capitalization, number of index components, and index concentration limits.[77] To mitigate the potential for manipulation and other trading abuses, and to help maintain a fair and orderly market for the ETP Securities, these quantitative criteria are designed to help ensure a minimum degree of liquidity and diversification for the underlying or reference securities, assets, or instruments.

---

76 See, e.g., Securities Exchange Act Release Nos. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (SR-Amex-2000-14) (approving generic listing standards for ETFs called Portfolio Depositary Receipts and Index Fund Shares); 45718 (Apr. 9, 2002), 67 FR 18965 (Apr. 17, 2002) (SR-NYSE-2002-07) (approving generic listing standards for Trust Issued Receipts); and 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR-NYSE-2007-27) (approving generic listing standards for Index-Linked Securities). See also, e.g., BATS Rules 14.11(b) (Portfolio Depositary Receipts), 14.11(c) (Index Fund Shares), 14.11(d) (ETNs), and 14.11(f) (Trust Issued Receipts), available at http://batstrading.com/resources/regulation/rule_book/BATS_Exchange_Rulebook.pdf; NASDAQ Rules 5705 (Index Fund Shares and Portfolio Depositary Receipts), 5710 (ETNs), and 5720 (Trust Issued Receipts), available at http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F4%5F3&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Dequityrules%2F; NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(6) (ETNs), 8.100 (Portfolio Depositary Receipts), and 8.200 (Trust Issued Receipts), available at http://nysearcarules.nyse.com/PCX/.

77 For example, with respect to equity-index-based ETFs, the generic listing standards generally contain the following requirements with respect to the underlying index: (1) that each component have a minimum market value; (2) that each component have a minimum monthly trading volume over the most recent six-month period; (3) that the index observe certain concentration limits (e.g., that no component may exceed 30% of the weight of the index and that the five most heavily weighted components may not exceed 65% of the weight of the index); (4) that there be a minimum number of components in the index; and (5) that each component either be an exchange-listed NMS stock or, if a non-U.S. stock, be listed and traded on an exchange that has last-sale reporting. See, e.g., BATS Rule 14.11(c); NASDAQ Rule 5705; NYSE Arca Equities Rule 5.2(j)(3), Commentary .01. With respect to ETNs, the generic listing standards also include minimum requirements relating to the issuer of the securities (e.g., minimum tangible net worth and minimum amount of assets), which are designed to mitigate issuer credit risk. See, e.g., BATS Rule 14.11(d); NASDAQ Rule 5710; NYSE Arca Equities Rule 5.2(j)(6).

Non-generic listing standards permit an exchange to list and trade a specific ETP Security (within a class of ETPs) only after the exchange has filed and the Commission has approved a proposed rule change that is specific to the new ETP Security.[78] Because of their security-specific nature, non-generic listing standards typically do not contain generalized quantitative criteria for the components included in an ETP's underlying or reference index or benchmark.

Exchanges seeking to adopt listing standards applicable to a new ETP product class—or to list and trade specific ETP Securities pursuant to existing non-generic listing standards for an ETP product class—are required to file proposed rule changes under Section 19(b)(1) of the Exchange Act[79] and Rule 19b-4 thereunder.[80] Once an exchange files a proposed rule change that complies with the Exchange Act, the rules thereunder, and the form governing such filings, statutory deadlines apply to Commission consideration of the filing.

Section 19(b)(2) of the Exchange Act, as amended by the Dodd-Frank Act,[81] effectively requires the Commission to publish notice of a proposed rule change within 15 days of filing.[82]

---

78 The ETP product classes that have non-generic listing standards include the following: Trust Issued Receipts based on investments in "investment shares" or "financial instruments;" Commodity-Based Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, Managed Trust Securities, and Trust Certificates. See, e.g., BATS Rules 14.11(e)(3) (Trust Certificates), 14.11(e)(4) (Commodity-Based Trust Shares), 14.11(e)(6) (Commodity Index Trust Shares), 14.11(e)(7) (Commodity Futures Trust Shares), 14.11(e)(8) (Partnership Units), 14.11(e)(9) (Trust Units), 14.11(e)(10) (Managed Trust Securities), and 14.11(i) (Managed Fund Shares); NASDAQ Rules 5711(c) (Trust Certificates), 5711(d) (Commodity-Based Trust Shares), 5711(f) (Commodity Index Trust Shares), 5711(g) (Commodity Futures Trust Shares), 5711(h) (Partnership Units), 5711(i) (Trust Units), 5711(j) (Managed Trust Securities), and 5735 (Managed Fund Shares); NYSE Arca Equities Rules 8.200 (Commentary .02) (Trust Issued Receipts based on investment shares or financial instruments), 8.201 (Commodity-Based Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.400 (Paired Trust Shares), 8.500 (Trust Units), 8.600 (Managed Fund Shares), 8.700 (Managed Trust Securities).

79 15 U.S.C. 78s(b).

80 17 CFR 240.19b-4.

81 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 916(a), 124 Stat. 1376, 1833-34 (2010).

82 15 U.S.C. 78s(b)(2)(E).

In general, for proposals that must be approved by the Commission before they may take effect (such as a filing concerning a new ETP), the Commission is required to take action within 45 days (which can be extended by the Commission or the exchange for another 45 days) after the date of publication of the proposal in the Federal Register.[83] The Commission may, however, institute proceedings to determine whether to disapprove a proposal, in which case the Commission is required to take final action to approve or disapprove a proposed rule change no later than 240 days after the proposal is published in the Federal Register.[84] If the Commission fails to meet any of the deadlines for final action on a proposed rule change, that proposed rule change is, pursuant to the Exchange Act, deemed to have been approved by the Commission.[85]

To approve an exchange's proposed rule change, the Commission must find that the proposed rule change is consistent with the applicable requirements of the Exchange Act and the rules and regulations thereunder.[86] The requirements imposed by the Exchange Act include those set forth in Section 6(b)(5), which provides that the rules of an exchange must be designed to do the following: (i) prevent fraudulent and manipulative acts and practices; (ii) promote just and equitable principles of trade; (iii) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (iv) remove impediments to and perfect the mechanism of a free and open market

---

83 Certain proposed rule changes are entitled to become "immediately effective" upon filing, without prior Commission approval. See 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(f) (setting forth certain limited conditions under which a proposed rule change may take effect immediately upon filing with the Commission).

84 See 15 U.S.C. 78s(b)(2)(B)(ii).

85 15 U.S.C. 78s(b)(2)(D).

86 15 U.S.C. 78s(b)(2)(C).

and a national market system; and (v) in general, to protect investors and the public interest.[87] With respect to the listing standards for ETP Securities, most exchange filings in connection with proposed rule changes include a general description of the following: (i) the ETP and its permitted investments or reference assets; (ii) how the ETP will seek to meet its investment objective; (iii) whether and to what extent information is available to investors about the pricing and valuation of the ETP Securities, the ETP's underlying assets, and the relevant index or reference assets;[88] (iv) how the exchange will monitor trading in the ETP Securities; and (v) the information that will be available to investors about the ETP Securities.[89]

---

87 15 U.S.C. 78f(b)(5). In addition, the proposed rule change must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers or to regulate by virtue of any authority conferred by the Exchange Act matters not related to the purposes of the Exchange Act or the administration of the exchange. Id.

88 For index-based ETPs, exchange rules generally require that the underlying or reference index or benchmark be calculated and disseminated throughout the trading day. The frequency of dissemination depends on whether the components are U.S. equities, foreign equities, or fixed-income securities. See, e.g., Commentary .01(b)(2) to NYSE Arca Equities Rule 5.2(j)(3) (requiring that the current index value be widely disseminated every 15 seconds during the exchange's Core Trading Session for investment company units that track a U.S. equity index and every 60 seconds for investment company units that track an international or global equity index); Commentary .02(b)(ii) to NYSE Arca Equities Rule 5.2(j)(3) (requiring that the current index value for investment company units that track a fixed-income index be disseminated at least once per day). For ETNs, exchange rules generally require that the value of the reference assets be calculated and disseminated throughout the trading day. See, e.g., NYSE Arca Equities Rule 5.2(j)(6)(B)(II)(1)(b)(ii) (requiring that the value of the commodity reference asset be calculated and widely disseminated on at least a 15-second basis during the exchange's Core Trading Session for commodity-linked securities). As noted above, most ETN issuers also make publicly available a closing indicative value that is determined as of the close of each trading day. See supra note 26.

89 Exchanges are required by their listing standards to distribute information circulars or bulletins to exchange members relating to the listing of ETP Securities. See, e.g., NYSE Arca Equities Rules 5.1(a)(2), 5.2(j)(3) Commentary .01(g), 8.100(c), and 8.600 Commentary .05. The information to be contained in these circulars is generally specified in a Commission order approving the listing and trading of new ETP Securities and typically includes: (a) the special characteristics and risks associated with trading ETP Securities; (b) the procedures for creations and redemptions of ETP Securities; (c) the exchange requirements relating to the members' obligations to learn the essential facts in connection with every customer prior to trading ETP Securities and other suitability requirements, such as information contained in guidance issued by FINRA with respect to the trading and sales of leveraged and inverse-leveraged ETPs and other complex securities products; (d) how information regarding the IIV is disseminated and the risks involved in trading ETP Securities outside of regular trading hours when an updated IIV is not calculated or available; (e) applicable prospectus delivery requirements; and (f) other information (e.g., fees and expenses of the ETP and the time at which the NAV will be calculated and published daily). See, e.g., Securities Exchange Act Release Nos. 65136 (Aug. 15, 2011), 76 FR 52037, 52040 (Aug. 19, 2011) (SR-NYSEArca-2011-24); 68390 (Dec. 10, 2012), 77 FR 74540, 74543 (Dec. 14, 2012) (SR-BATS-2012-042); and 70829 (Nov. 7, 2013), 78 FR 68482, 68485 (Nov. 14, 2013) (SR-NASDAQ-2013-122).

3. Broker-Dealer Sales Practices

Broker-dealers, which are registered with and regulated by the Commission under the Exchange Act, are also subject to regulation by the self-regulatory organizations ("SROs") to which they belong—e.g., FINRA and the exchanges. Both federal and SRO regulations impose duties on broker-dealers when dealing with their customers and, in particular, when recommending the purchase or sale of securities by their customers.[90] These duties include making suitable recommendations, engaging in fair and balanced communications with the public, disclosing conflicts of interest, and receiving fair compensation both in agency and principal transactions.[91]

In addition, a broker-dealer that recommends buying, holding, or selling an ETP, or an investment strategy involving an ETP, may be subject to additional or heightened scrutiny regarding ETPs with respect to brokerage customers, as described in FINRA guidance regarding complex products and non-traditional ETPs.[92]

---

[90] See e.g., Exchange Act Section 15(c) and FINRA Rule 2111.

[91] See, e.g., A Joint Report of the SEC and CFTC on Harmonization of Regulation, at 8 (Oct. 16, 2009), http://www.sec.gov/news/press/2009/cftcjointreport101609.pdf ("Under the federal securities laws and SRO rules, broker-dealers are required to deal fairly with their customers. This includes having a reasonable basis for recommendations given the customer's financial situation (suitability), engaging in fair and balanced communications with the public, . . . disclosing conflicts of interest, and receiving fair compensation both in agency and principal transactions. In addition, the SEC's suitability approach requires BDs [i.e., broker-dealers] to determine whether a particular investment recommendation is suitable for a customer, based on customer-specific factors and factors relating to the securities and investment strategy. A BD must investigate and have adequate information regarding the security it is recommending and ensure that its recommendations are suitable based on the customer's financial situation and needs. The suitability approach in the securities industry is premised on the notion that securities have varying degrees of risk and serve different investment objectives, and that a BD is in the best position to determine the suitability of a securities transaction for a customer. Disclosure of risks alone is not sufficient to satisfy a broker-dealer's suitability obligation.")

[92] See FINRA Notice to Members ("FINRA NTM") 12-03 (Jan. 2012) (Heightened Supervision of Complex Products). See also FINRA NTM 10-51 (Oct. 2010) (Sales Practice Obligations for Commodity Futures-Linked Securities); FINRA NTM 09-73 (Dec. 2009) (FINRA Reminds Firms of their Sales Practice Obligations Relating to Principal-Protected Notes); FINRA NTM 09-31 (June 2009) (FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds); FINRA NTM 08-81 (Dec. 2008) (FINRA Reminds Firms of their Sales Practice Obligations with Regard to the Sale of Securities in a High Yield Environment); NASD Notice to Members ("NASD NTM") 05-59 (Sept. 2005) (NASD Provides Guidance Concerning the Sale of

II. REQUEST FOR COMMENT

The Commission is soliciting public comment to help inform its review of the listing and trading of new, novel, or complex ETPs, including requests by ETPs for exemptive and no-action relief under the Exchange Act and filings by exchanges to adopt listing standards applicable to ETPs. The Commission is also soliciting comment regarding the ways in which broker-dealers, which are regulated under the Exchange Act, market these products, especially to retail investors. Finally, the Commission seeks comment on investor understanding of the nature and uses of ETPs, particularly by retail investors.

The Commission periodically has solicited public comment on issues relating to ETFs since their inception over two decades ago. In 2001, the Commission issued a Concept Release on Actively Managed Exchange-Traded Funds.[93] That release sought comment on a number of issues relating to actively managed ETFs, focusing in particular on the operation of actively managed ETFs as open-end investment companies and on the exemptive relief under the 1940 Act that would be required for such funds.[94] Then, in 2008, the Commission proposed and sought comment on a rule that would exempt ETFs from certain provisions of the 1940 Act and permit certain ETFs to begin operating without the need to obtain an exemptive order under the 1940 Act.[95] Once again, the focus of that release was on the operation of ETFs as open-end investment

---

Structured Products); and NASD NTM 03-71 (Nov. 2003) (NASD Reminds Members of Obligations When Selling Non-Conventional Instruments).

93 Concept Release: Actively Managed Exchange-Traded Funds, Investment Company Act Release No. IC-25258 (Nov. 8, 2001), 66 FR 57614 (Nov. 15, 2001) (S7-20-01), available at http://www.sec.gov/rules/concept/ic-25258.htm.

94 In response, the Commission received 20 comment letters, which are available on the Commission's website at http://www.sec.gov/rules/concept/s72001.shtml.

95 See Exchange-Traded Funds (proposed rule), supra note 9.

companies under the 1940 Act and on the exemptive relief provided to such funds under the 1940 Act.[96]

Here, the Commission seeks comment on the treatment of a broader group of products—ETPs, rather than just ETFs—and the Commission seeks public comment specifically with respect to its oversight of ETPs under the Exchange Act. As noted above, ETP trading makes up a significant percentage of equity trading in the United States.[97] And, while the Commission has gained extensive experience and familiarity with the topics discussed in the questions below, the Commission believes that it would be beneficial to engage broader public comment on these important topics.

To inform the Commission's review of new, novel, or complex ETPs under the Exchange Act, commenters are invited to provide their views regarding the listing and trading of ETP Securities, such as the manner in which ETP Securities are initially listed on a national securities exchange, the manner in which ETP Securities trade in the secondary market, and the exemptive or no-action relief that has been granted to ETPs under the Exchange Act. Commenters are further invited to provide their views regarding how broker-dealers (which are regulated under the Exchange Act) recommend and sell ETPs to investors, how broker-dealers fulfill their obligations to investors when they recommend and sell ETPs, and investors' understanding and use of ETPs. Commenters should be as specific as possible in their responses, explain the reasoning supporting those responses, and provide supporting data wherever possible.

---

96 In response to these proposals, the Commission received 25 comment letters, which are available on the Commission's website at http://www.sec.gov/comments/s7-07-08/s70708.shtml.

97 See supra note 5 and accompanying text.

A. Arbitrage and Market Pricing

As discussed above, existing ETPs trade at market prices rather than at a price based on NAV. When providing exemptive or no-action relief under the Exchange Act, the Commission and its staff have analyzed and relied upon the representations from ETP issuers regarding the continuing existence of effective and efficient arbitrage to help ensure that the secondary market prices of ETP Securities do not vary substantially from the value of their underlying portfolio or reference assets.

In the Commission's experience, the deviation between the daily closing price of ETP Securities and their NAV, averaged across broad categories of ETP investment strategies and over time periods of several months, has been relatively small. For example, the average absolute value of the daily difference between the NAV and the closing market price during a six-month period ending in December 2014 was just 0.21% for ETPs based on U.S. equities indices and 0.38% for actively managed ETPs based on U.S. equities.[98] The respective figures for index-based and actively managed ETPs based on U.S. fixed-income securities were 0.26% and 0.19%.[99]

Other types of ETPs have had a somewhat higher deviation between NAV and their closing price. For example, ETPs based on international indices had an average absolute value of daily difference of 0.52% between NAV and the closing price, while actively managed ETPs based on international fixed-income securities had an average absolute value of daily difference

---

98 The average of the absolute value of these differences is used because the closing market price of an ETP can deviate either above or below its NAV on any given day, and a calculation that allowed positive deviations to offset negative deviations would understate the extent of the deviations.

99 Figures in this paragraph represent an analysis by Commission staff of market data obtained through a subscription to Bloomberg Professional services.

of 0.44% between NAV and the closing price during the six-month period studied.[100] These numbers, however, represent only broad averages with respect to end-of-day differences, and intraday premiums or discounts between an ETP's market price and the value of its portfolio or reference assets (or, for certain ETNs, the value of the note according to its terms) can be greater under certain circumstances.[101] Moreover, these numbers represent broad averages, and the Commission seeks public comment and data in response to the specific questions below.

The Commission seeks comment with respect to all aspects of the arbitrage mechanism for ETPs, including the nature, extent, and potential causes of premiums and discounts across the wide range of ETP strategies and holdings. Additionally, in connection with its review of the listing and trading of ETPs, the Commission seeks comment on the trading of ETPs investing in less-liquid assets,[102] including fixed-income instruments, during periods of market stress.

1. Arbitrage mechanisms are designed to keep intraday trading prices of ETP Securities equal (or nearly equal) to the contemporaneous value of the underlying portfolio or reference assets. Do these mechanisms work better for some types or categories of ETPs? To what extent do arbitrage mechanisms help ensure efficient market pricing for ETPs throughout periods of market volatility, including times of market stress?

---

100 The figures in this paragraph reflect an analysis by the staff of the Office of Analytics and Research in the Division of Trading and Markets of market data obtained through a subscription to Bloomberg Professional services.

101 As an extreme example, during the so-called "Flash Crash" of May 6, 2010, many ETP Securities temporarily traded at significant discounts to their IIV, even though their prices recovered before the end of the day. See Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues (Sept. 30, 2010), available at http://www.sec.gov/news/studies/2010/marketevents-report.pdf.

102 As used in this release, "liquidity" generally refers to the ability of a market participant to buy or sell an asset immediately without significantly affecting the market price for that asset. Although certain fixed-income instruments, such as on-the-run U.S. Treasury securities, trade in markets with substantial liquidity, fixed-income instruments generally trade with less liquidity than equity securities.

2. Do commenters believe that there are other mechanisms besides arbitrage mechanisms that do, or could, help ensure efficient market pricing of ETPs? Do other factors play a role in efficient market pricing of ETPs? If so, what are these mechanisms or factors, and how effective are they? Are these mechanisms or factors more effective for certain types or categories of ETPs? To what extent are these mechanisms or factors effective during periods of market volatility?

3. What characteristics of an ETP facilitate or hinder the alignment of secondary market share prices with the value of the underlying portfolio or reference assets? What characteristics of an ETP's underlying or reference assets facilitate or hinder the alignment of secondary market share prices with the value of the underlying portfolio or reference assets? Does liquidity in the market for an ETP's underlying or reference assets affect arbitrage, and if so, how and to what extent? Does the availability of current and historical pricing information, as well as trading history, for the underlying or reference assets affect arbitrage, and if so, how and to what extent? To what extent does the availability of correlated hedges for the ETP's underlying or reference assets affect arbitrage and pricing efficiency? To what extent does an ETP's use of a sampling methodology (investing in a subset of the components of an index) to track an index affect arbitrage and pricing efficiency? Does the use of over-the-counter instruments by an ETP affect the opportunity for market makers or other participants to engage in arbitrage, and if so, how and to what extent? Do non-synchronous market hours between an ETP and its underlying assets (e.g., international equities) affect the pricing of an ETP and the opportunity for arbitrage, and if so, how? Does the use of cash-only creation or redemption baskets and variable cash fees affect efficient market pricing, and if so, how?

4. How closely do investors or other market participants expect the intraday trading price of ETP Securities to be aligned with the contemporaneous value of their underlying portfolio or reference assets? Do these expectations differ depending on the type of ETP, the nature of the underlying assets, or market conditions? What methods, if any, do investors use to determine whether the intraday trading price of ETP Securities closely tracks the value of their underlying portfolio or reference assets?

5. Do market participants conduct analyses of how well intraday prices of ETP Securities track the value of their underlying portfolio or reference assets? If so, how much weight do market participants place on such analyses?

6. Under what circumstances might the prices of ETP Securities not track (on an intraday, temporary end-of-day, or permanent basis) the value of their underlying portfolio or reference assets? Are there circumstances in which the price of an ETP's Securities, though different from its NAV, might be a more accurate measure of the value of the ETP's underlying assets? What are the implications for investors (both individual and institutional) and other market participants if intraday prices for ETP Securities do not closely track the value of their underlying portfolio or reference assets, either on an intraday, temporary end-of-day or permanent basis?

7. To what extent do arbitrage mechanisms affect trading in an ETP's underlying or reference assets? Does the answer vary depending on whether the underlying or reference assets are equities, fixed-income securities, commodities, derivatives, or another type of asset? If so, how?

8. To what extent do ETNs offer opportunities for arbitrage? How do market participants engage in arbitrage for ETNs? How is arbitrage affected by ETN issuers' ability to

suspend and restart issuances of notes at their discretion? How are arbitrage opportunities affected when an issuer suspends the issuance of its ETNs? Are certain ETNs easier or more difficult to arbitrage due to the nature of the ETN's reference asset or index, and, if so, which ones?

9. As noted above, the IIV for an ETP is generally designed to provide investors information during the trading day on the value of the ETP's portfolio (or, in the case of an ETN, on the value of a reference asset or index). The IIV may be subject to various calculation methodologies. How does the calculation of IIV vary, if at all, among ETPs? Does the calculation methodology depend on the class or type of ETP, and if so, how? Does the calculation methodology depend on the nature of the underlying portfolio or reference assets, and if so, how? Are certain IIV calculation methodologies more or less useful for investors, market makers, or other market participants?

10. To what extent do market participants make use of the IIV for an ETP based on less-liquid securities? If underlying assets trade infrequently or are priced only at the end of the trading day for purposes of NAV calculation, does an IIV that is disseminated every 15 seconds (as is currently the case) contain useful pricing information? Would a different dissemination frequency be more appropriate, and if so, what would that be?

11. Do investors or other market participants use intraday or closing indicative values for ETNs? If so, for what purpose? How does the intraday or closing indicative value differ from the market value of an ETN or its redemption amount?

12. How much disclosure about the contents of an ETP's underlying portfolio is necessary for arbitrage to function efficiently to keep the market price of an ETP aligned with the contemporaneous value of its underlying or reference portfolio? Please explain.

13. In the absence of daily portfolio disclosure for an ETP, could other mechanisms enable market makers or other market participants to make efficient markets in that ETP? If so, what are those mechanisms and how would they function? What, if any, information disclosure, characteristics of the ETP, or other circumstances would be necessary for those mechanisms to function?

14. Under what circumstances would an ETP suspend creations? Under what circumstances could an ETP (other than a 1940-Act registered ETF) suspend redemptions? What effect does this or could this have on arbitrage mechanisms or the market value of these products? How might suspension of creations or redemptions affect the ETP's continued compliance with the conditions of its exemptive and no-action relief under the Exchange Act? How would an ETP issuer be likely to respond to the suspension of creation or redemption activity by one or more of its Authorized Participants?

15. How do arbitrage mechanisms work in the case of ETPs with less-liquid underlying or reference assets? Are arbitrage mechanisms for ETPs with less-liquid underlying or reference assets effective and efficient in aligning share prices with the value of the underlying portfolio or reference assets?

16. To what extent do arbitrage mechanisms help ensure efficient market pricing throughout rising and falling markets, including times of market stress, for ETPs with underlying or reference assets that are less-liquid? Do periods of market stress affect arbitrage mechanisms for such ETPs, and if so, how? Could there be a point at which the amount of ETP Securities outstanding relative to the amount of underlying or reference assets outstanding results in an imbalance that inhibits the redemption process during periods of market stress?

17. To what extent, if any, does trading activity in ETP Securities affect price discovery, price correlation, liquidity, or volatility in the ETP's underlying or reference assets? What role, if any, do ETP Securities that are based on less-liquid underlying securities have in providing additional price discovery for the underlying securities?

18. Should the listing exchange for an ETP have an obligation to monitor the effectiveness of that ETP's arbitrage mechanism? If yes, what should be the nature of that obligation?

B. Exchange Act Exemptions and No-Action Positions

The Commission believes it is useful and timely to examine the application of Rules 101 and 102 of Regulation M in the context of ETPs—particularly those ETPs with an underlying trust or other collection of underlying assets—given the increasing complexity of ETP investment strategies and the expansion of the types of underlying and reference assets and benchmarks. The Commission solicits comment on approaches for preventing manipulation of an ETP Securities distribution by persons who may have an incentive to do so in light of the nature, variety, and complexity of ETP investment strategies and ETP markets.

19. The staff has issued no-action relief from Rules 101 and 102 of Regulation M to ETNs in part on the basis of assumptions that the secondary market price for such products should not vary substantially from the value of the relevant reference index.[103] Given that the secondary market price of an ETN can substantially deviate from its reference assets when the issuer of that ETN suspends issuances, how should Rules 101 and 102 of Regulation M apply to such products? Should relief from these rules be limited to ETNs where there is a clear, independent index, where there is no limitation on issuances or redemptions, or where an ETN's secondary market price does not vary substantially from

[103] See, e.g., ETN No-action Letter, supra note 70.

the relevant reference index? What effect would such a change have? Are there any other relevant factors in this context? Are there any risks in maintaining the current relief for ETNs? What are the benefits of the relief? How should the Commission balance the risks against any benefits resulting from the ability of Authorized Participants to suspend issuances or redemptions? Should relief for ETNs contain different conditions than relief for other ETPs?

20. Because ETPs are in continuous distribution, they generally need, on an ongoing basis, to meet the conditions of the Regulation M relief that has been extended to them and to meet the representations made in seeking relief under Regulation M.[104] What would an ETP do if it could no longer meet one or more of these conditions or representations and could no longer rely on the relief? In such situations, would the ETP halt creations or, for ETPs not registered under the 1940 Act, redemptions? What effect would that have on the market for that ETP's securities? What would be the effect if this resulted in a halt or suspension of trading activity in the ETP Securities, or in the ETP Securities being delisted? How would investors be affected?

21. What purchasing activities do distribution participants (such as Authorized Participants) engage in during the distribution of ETP Securities? Are these activities limited to the purchasing of shares to accumulate a redemption unit, or are there other reasons for distribution participants to engage in purchases of ETP Securities?

---

[104] Conditions and representations concerning relief under Regulation M are discussed in section I.D.1.a, supra.

The Commission also invites comment on the conditions pertaining to ETPs' exemptions from, and the criteria relied on by the staff in no-action positions regarding, Section 11(d)(1) of the Exchange Act and Exchange Act Rules 10b-10, 11d1-2, 14e-5, 15c1-5, and 15c1-6.

22. How well do the conditions of the ETPs' exemptions and the staff no-action relief from Section 11(d)(1) and Rule 11d1-2 thereunder, as discussed in section I.D.1.b above, achieve Section 11(d)(1)'s purpose of prohibiting broker-dealers from using favorable margin arrangements to aid in the distribution of securities in which they have an interest? Could different conditions be more effective at achieving this purpose?

23. How often do ETP investors request detailed confirmation information, as discussed in Section I.D.1.c above, in creation and redemption transactions as provided for in the Commission's exemptions from Rule 10b-10 and the related staff no-action positions? What is the cost to broker-dealers of providing this information? Has the availability of modern information technology reduced these costs? Who bears those costs? Do ETP investors use and benefit from this information, and if so, how? What would be the effect of eliminating the exemptions and no-action relief from Rule 10b-10, thereby requiring broker-dealers to provide detailed confirmations to ETP purchasers in all transactions? What would be the effect of eliminating the requirement to send this information to ETP investors upon request? Could different conditions achieve the purposes of Rule 10b-10 at less cost or burden to broker-dealers? If so, what trade-offs would there be, if any?

24. Has Rule 14e-5, discussed in Section I.D.1.e above, affected the structure of ETPs and, if so, in what ways?

25. Authorized Participants generally have no-action relief from the requirements in Rules 15c1-5 and 15c1-6, as discussed in Section I.D.1.f above, to disclose the Authorized

Participants' control relationships or interest in the distribution of securities that compose Portfolio Deposits and Redemption Baskets. Given the large number of securities included in many ETPs, would investors realize any benefit from receiving this information in creation and redemption transactions? What would be the cost of providing this information in all transactions or, alternatively, upon an ETP investor's request, and who would bear those costs? Has the availability of modern information technology made it easier or less costly to provide such information? Could different conditions for "Qualifying ETFs"[105] achieve the purposes of those rules at less cost or burden to broker-dealers? If so, what trade-offs would there be, if any?

C. Exchange Listing Standards

26. The exchanges (as SROs) and the Commission both have responsibilities with respect to determining whether the proposed listing and trading of ETP Securities is consistent with the Exchange Act and the rules and regulations thereunder.[106] Do commenters believe that these independent obligations, in practice, complement each other? Do commenters believe that these obligations overlap each other? To the extent that these obligations overlap, how do commenters believe they should be allocated between the exchanges and the Commission?

---

[105] See note 62, supra.

[106] Exchanges seeking to adopt listing standards applicable to a new ETP product class—or to list and trade specific ETP Securities pursuant to existing non-generic listing standards for an ETP product class—are required to file proposed rule changes on Form 19b-4. See 17 CFR 249.819. The instructions to Form 19b-4 state that an exchange filing the form must provide "a statement of the purpose of the proposed rule change and its basis under the [Exchange] Act and the rules and regulations thereunder applicable to the [exchange]" and this statement "should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with the requirements of the [Exchange] Act and the rules and regulations thereunder . . . ." To approve an exchange's proposed rule change, the Commission must find that the proposed rule change is consistent with the applicable requirements of the Exchange Act and the rules and regulations thereunder. 15 U.S.C. 78s(b)(2)(C). See also supra notes 79-89 and accompanying text.

27. Do the business practices of an exchange with respect to attracting, listing, and trading ETP Securities differ from an exchange's business practices with respect to more traditional equity listing services? If so, how do these business practices align with the existing regulatory framework for exchanges as SROs?

28. Are current exchange listing standards (including standards with respect to component eligibility, diversification, and pricing) effective, given the increasing complexity of ETP investment strategies and the expansion of the types of underlying and reference assets and benchmarks? For example, do existing listing standards adequately address the use by ETPs of non-exchange-listed derivatives or of leverage?

29. Given the increasing complexity of ETP investment strategies and the expansion of the types of underlying or reference assets and benchmarks, what types of information do commenters believe would assist the Commission in evaluating whether a proposed rule filing by an exchange to list and trade a specific ETP is consistent with the Exchange Act?

30. Should certain characteristics of an ETP receive particular emphasis in the Commission's evaluation of whether a proposed rule filing related to that ETP is consistent with the Exchange Act? If so, which ones? For example, should the Commission's evaluation focus on the nature, characteristics, or liquidity of the specific investments, holdings, indices, or reference assets of the ETP and on the public availability of information about these underlying or reference assets? Should the Commission's evaluation focus on the effectiveness or efficiency of the creation and redemption process in facilitating arbitrage opportunities with respect to an ETP? What other factors, if any, should the Commission

consider in its evaluation of whether a proposed rule filing related to an ETP is consistent with the Exchange Act?

31. Exchange listing standards for ETP Securities often contain both initial listing criteria and continuing listing criteria. The initial listing criteria include requirements that must be met when ETP Securities are initially listed on an exchange. The continuing listing criteria include requirements that must be met on an ongoing basis. Should exchange listing standards always contain both initial and continuing listing criteria? Should initial and continuing listing standards for ETP Securities be substantially identical?

32. What, if any, is the appropriate role of an exchange that lists ETP Securities with respect to monitoring creation and redemption activity? For example, should the exchange be informed of an ETP's decision to suspend creations or redemptions during the trading day? If so, should the exchange be required to alert its members, investors, and other market participants?

33. What, if any, is the appropriate role of an exchange that lists ETP Securities with respect to monitoring or overseeing the calculation of IIV or NAV?

34. Do market participants believe that certain types of ETPs are more susceptible to manipulation than others? If so, please explain. To what extent, if at all, does the nature, characteristics, liquidity, or volatility of an ETP's underlying or reference assets affect the ETP's susceptibility to manipulation?

D. Broker-Dealer Sales Practices and Investor Understanding and Use of ETPs

The Commission seeks comment on the use of ETPs by investors and the ways in which ETPs are recommended or sold to investors, particularly retail investors. In particular, the Commission seeks comment on the extent to which individual investors buy or sell ETPs with complex investment strategies based on the recommendation of a broker-dealer and the extent to which individual investors understand the nature and operation of such ETPs. The Commission also seeks comment on how broker-dealers meet their obligations to customers when recommending ETPs. While the questions below focus on broker-dealer sales practices, the Commission recognizes that investment advisers also play a role in the purchase or sale of ETPs by investors. Consequently, the Commission invites commenters to address the role of investment advisers in their responses, where applicable.

35. Do individual investors tend to buy and hold ETP Securities? Does the answer depend on the type of ETP (e.g., investment objective, structure, or type of underlying asset)? Do investments by individual investors tend to be solicited or unsolicited? Please explain and provide data where available. If solicited, are solicitations limited to certain categories of investors (e.g., retail investors or high-net-worth individuals) and certain types of ETPs? If so, which categories of investors receive solicitations and how are the parameters of the category determined—e.g., net worth, income, investment experience, options trading eligibility? In addition, which types of ETPs are recommended and what are the parameters being used to determine whether those ETPs should be recommended? Are individual investors purchasing ETPs on the basis of recommendations by brokers?

36. How effective are the suitability requirements applicable to brokerage accounts in addressing broker-dealer sales practices for ETPs in light of the breadth of available ETP options and the growing complexity of ETP investment strategies?

37. What methods do, or could, broker-dealers employ to meet their sales-practice and suitability obligations for ETP Securities?

38. Do investors have access to sufficient information to understand ETPs, how ETP Securities trade, the costs associated with trading ETP Securities, and how their prices

and valuations are determined, particularly as ETPs encompass increasingly complex benchmarks, asset classes, and investment strategies? What is the source of information (e.g., exchanges, broker-dealers, market intermediaries, prospectuses, SEC releases, or investor alerts) available to investors? Are there ways to better enable investors to access information about the listing and trading of ETP Securities? If yes, what are they?

39. What roles, if any, should the exchanges have in communicating information about ETP Securities to their members, their members' customers, and the general public? Should the answer depend on whether the exchange is the listing exchange or an exchange that trades the ETP pursuant to unlisted trading privileges?

40. How do broker-dealers communicate information about ETP Securities to their customers? Are investors introduced to ETPs through information provided generally by broker-dealers (e.g., posted on a broker-dealer's website for all investors to consider)? Do broker-dealers provide information to investors regarding the type of investor for which a specific product is suitable and what holding periods are appropriate? Are there any other ways that broker-dealers should communicate information relevant to the ETP Securities to their customers? Do broker-dealers restrict or otherwise limit access by certain types of investors to certain types of ETP Securities? If so, please describe these restrictions.

41. Do broker-dealer communications concerning ETPs provide enough information for a retail investor to evaluate the facts concerning ETPs? Do the communications disclose the risks and benefits potentially associated with ETPs? Are those disclosures reasonably understandable for retail investors, and are they presented in a balanced manner? What types of broker-dealer communications about ETPs are most effective?

42. Are there specific aspects of ETP trading that should be communicated to investors to better inform their investment decisions (e.g., the specific risks of investing in certain products or that certain products may not be suitable for certain types of investors)? Are there types of risks in particular ETPs that should be highlighted? If so, in what way, and who should have the responsibility for communicating that information? When should that information be communicated (e.g., prior to making recommendations or prior to accepting a customer order)?

43. Should broker-dealers have additional responsibility to make available or provide information to investors about the risks of investing in ETPs with complex strategies prior to making a recommendation or accepting a customer order for such securities? What costs would broker-dealers incur in providing such information? Who would bear those costs? What costs do broker-dealers currently incur in providing information to customers about ETPs? Who bears those costs?

44. Do broker-dealer communications to investors about ETPs present any performance data? If so, how is that data presented? What types of disclosures accompany the performance data?

45. Are there aspects of ETP arbitrage mechanisms that should be prominently disclosed to investors? If so, how and where? Do investors understand the arbitrage mechanisms of ETPs, and, if so, do they consider the effectiveness and efficiency of these mechanisms when making an investment decision? If so, how?

46. Do broker-dealers use the term "ETF" to describe all types of ETPs (as opposed to only those products registered under the 1940 Act)? If so, is this confusing to investors?

47. What use do investors or other market participants make of publicly available information such as the index value, IIV, NAV, or portfolio holdings of an ETP? Does the answer depend on the type of market participant? If so, why do certain market participants use certain information? If market participants do not use certain information, why not? Do the answers depend on the type of underlying asset?

48. Do investors understand what an ETP's IIV represents and what it does not? For example, do they understand that the IIV is not a "real-time" update of the NAV and that it is not the price at which they can purchase ETP Securities? Do investors understand how the IIV calculation method can differ from the method used to calculate NAV? Do investors understand that IIV may be a lagging indicator of actual portfolio values during periods of rapid price movements? Please describe the basis for any views expressed regarding the understanding of investors.

49. Do investors' expectations of the nature of the liquidity, the bid-ask spreads, and the market prices of an ETP holding less-liquid underlying securities differ from their expectations of the characteristics of those underlying securities? If so, in what ways do investors expect ETPs based on less-liquid securities to trade differently than the underlying securities themselves?

E. Other

50. The Commission notes that, over the years, there have been ETPs that have closed after being listed and traded for some period of time. What are the consequences to investors of the closure and liquidation or termination of an ETP?

51. How are the types and complexity of the investment strategies and investment objectives of ETPs, and the nature of the market for ETPs, likely to develop in the future? How might these changes affect the listing and trading of ETP Securities? How might these

changes affect any underlying securities held by an ETP—for example with respect to liquidity, volatility, and capital formation?

52. As noted above, the total market capitalization of ETPs has grown significantly, nearly doubling since the end of 2009. What do commenters believe are the main reasons for this growth? Do commenters expect significant growth in the number, variety, and market capitalization of ETPs to continue? If such growth continues, how might that affect the exchanges' listing and trading of ETP Securities? How might this growth affect investors, broker-dealers, or other market participants?

53. The Commission provides market structure research, interactive data visualization tools, and advanced market metrics on its Market Structure Data and Analysis website, http://www.sec.gov/marketstructure/index.html. Users of the website and its data can, among other things, compare quoting and trading characteristics of ETPs to those of other equity securities. Have commenters drawn any observations or conclusions from this data about the listing and trading of ETPs? What effects, if any, does market structure have on the quoting and trading of ETPs? What effects, if any, does the quoting and trading of ETPs have on the general characteristics of current equity market structure? Do any specific aspects of current equity market structure facilitate or hinder the fair and efficient quoting and trading of ETPs? What types of additional information or data would commenters like to see regarding the quoting and trading characteristics of ETPs?

The Commission welcomes all comments and encourages commenters to discuss any other questions, issues, concerns, or data regarding the listing and trading of ETP Securities on national securities exchanges.

By the Commission.

Dated: June 12, 2015

Brent J. Fields
Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75172 / June 15, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16589

In the Matter of **HELMUT ANSCHERINGER,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Helmut Anscheringer ("Anscheringer" or the "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, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and Desist Order (the "Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

SUMMARY

1. This matter involves insider trading by Anscheringer, a Swiss national, in the securities of AuthenTec, Inc. ("AuthenTec") in advance of the July 27, 2012 announcement that Apple, Inc. ("Apple") had agreed to acquire AuthenTec (the "Announcement").

2. During the months leading up to the Announcement, Anscheringer received material nonpublic information about the proposed acquisition of AuthenTec from Individual A, an immediate family member of an AuthenTec executive, and then traded on the basis of that information. As a result of his improper use of the insider information, Anscheringer realized a trading profit of at least $1,820,024.

3. By virtue of his conduct, Anscheringer violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

RESPONDENT

4. Anscheringer, age 75, is a resident of Basel, Switzerland. He has owned a residential property in Naples, Florida since 2002. He has been friends and business colleagues with Individual A for nearly thirty years.

OTHER RELEVANT ENTITIES AND INDIVIDUAL

5. AuthenTec, Inc., a Delaware company headquartered in Melbourne, Florida, was a software and hardware provider for fingerprint sensors used in mobile devices, computers and other machines. AuthenTec's stock was listed on the NASDAQ under the ticker "AUTH" and options in AuthenTec stock traded on multiple U.S. options exchanges. On October 4, 2012, Apple completed the acquisition of AuthenTec and AuthenTec terminated its registration shortly thereafter.

6. Apple, Inc. is a Delaware company headquartered in Cupertino, California.

7. Individual A resides in Naples, Florida. Individual A previously lived in Basel, Switzerland and worked at the same company as Anscheringer. Individual A is related to a former AuthenTec employee.

---

[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.

FACTS

8. On July 27, 2012, AuthenTec filed an 8-K announcing that it had agreed to be acquired by Apple for an offer of $8 per share. The acquisition was completed on October 4, 2012, with AuthenTec becoming a wholly-owned subsidiary of Apple.

9. The acquisition concluded a lengthy negotiation period that began in late 2011, at which time Apple expressed interest in AuthenTec's fingerprint sensor technology and pursuing a commercial arrangement. On May 1, 2012, Apple formally proposed an acquisition to AuthenTec at a meeting at Apple's headquarters in Cupertino (the "May 1 Meeting"). From May 1 to July 27, 2012, AuthenTec and Apple worked on both acquisition and licensing agreements.

10. Under the acquisition agreement with Apple, Apple agreed to acquire AuthenTec for approximately $355 million in cash, paying AuthenTec's shareholders $8 per share. Three months prior to the May 1 Meeting (January 30 through April 30, 2012), AuthenTec shares had been trading at an average price of $3.33 and at an average volume of 166,000 shares.

11. Individual A is an immediate family member of an AuthenTec executive who was active in the negotiations between AuthenTec and Apple. This included communicating regularly with Apple, making various presentations to Apple, responding to Apple's requests for information regarding AuthenTec's technology and advising AuthenTec's CEO, legal and finance members throughout the negotiations. The executive came to learn of Apple's proposal to acquire AuthenTec after the May 1 Meeting. Thereafter, the executive conveyed this material nonpublic information to his immediate family, including Individual A.

12. Anscheringer has known and been friends with Individual A for about three decades. He and Individual A met in Basel, Switzerland while working at the same company. Both of them have also owned homes in Naples, Florida for more than a decade. When they were both based in Basel, Anscheringer and Individual A each traveled to and frequented their Naples properties, especially during the winter months. At the time of his trading in 2012, Anscheringer knew the executive, Individual A's family member, worked at AuthenTec.

13. On Friday, May 18, 2012, Anscheringer communicated with Individual A. Through an account in the name of a BVI-registered entity, for which he was the beneficiary of, Anscheringer placed his first order to purchase AuthenTec the same day. He had not previously held AuthenTec securities. Subsequently, Anscheringer made significant purchases of AuthenTec stock and options, and also deposited funds and sold other investments in order to make these purchases.

14. On July 23 and 24, 2012, Anscheringer purchased through the company's account a total of 4,000 AuthenTec call option contracts. These purchases

were set to expire in three months and accounted for nearly all of the options series trade volume on the dates Anscheringer bought them.

Trade Date	AUTH Purchases	Option Series Trade Volume %
July 23, 2012	Buy 1,000 AUTH 20 Oct Calls	98.20%
July 24, 2012	Buy 3,000 AUTH 20 Oct Calls	80.59%

Anscheringer traded in no other options but AuthenTec in 2012.

15. In addition to the call option contracts, Anscheringer also purchased through the company's account 100,000 shares of AuthenTec on July 24 and 200,000 more shares on July 25 and 26.

16. On July 27, 2012, AuthenTec made the Announcement. The market reacted significantly to the news. AuthenTec's stock price closed on July 27 at $8.42, approximately a 60% increase from the previous day's closing price of $5.07.

17. After the Announcement, Anscheringer immediately liquidated his options and also began selling his AuthenTec shares in the company's account. As a result of his trading, Anscheringer realized a profit of $1,820,024.

18. Anscheringer's purchases of AuthenTec call options and stock were on the basis of material nonpublic information regarding the proposed acquisition of AuthenTec that he received from Individual A. Anscheringer knew that the information provided to him by Individual A was in breach of duty.

19. As a result of the conduct described above, Anscheringer violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Anscheringer shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent shall, within ten (10) days of entry of this Order, pay disgorgement, which represents profits gained as a result of the conduct described here of $1,820,024, prejudgment interest of $121,732, and a civil money penalty in the amount of $910,012 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). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717. 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 Helmut Anscheringer 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 Glenn R. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, 18th Floor, Miami, FL 33131.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher Dissented as to Violations against Mason

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4116 / June 15, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16591

In the Matter of SFX Financial Advisory Management Enterprises, Inc. and Eugene S. Mason, Respondents.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING 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 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against SFX Financial Advisory Management Enterprises, Inc. ("SFX") and Eugene S. Mason ("Mason" and, collectively, "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 as to Mason, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing 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

From 2006 through 2011, Brian Ourand ("Ourand"), while SFX's Vice President and President, misappropriated at least $670,000 in assets from three client accounts. During this time, SFX failed to supervise Ourand and also committed compliance failures. In particular, SFX failed to adopt policies and procedures reasonably designed to prevent the misappropriation of client assets, failed to implement the policies it did have, violated the custody rule, and falsely stated in its Form ADV that it reviewed client accounts used for bill-paying services. SFX also failed to conduct its annual compliance review in 2011. Mason, SFX's Chief Compliance Officer ("CCO"), caused SFX's failure to implement its compliance policies, conduct an annual review and is responsible for a material misstatement in a Form ADV filing.

Respondents

1. **SFX Financial Advisory Management Enterprises, Inc.** is a Delaware corporation headquartered in Washington, District of Columbia. SFX became registered with the Commission as an investment adviser on September 21, 1992, but withdrew its registration on September 12, 2012. SFX is currently registered in the District of Columbia. In its most-recent Form ADV filing in March 2014, SFX disclosed that it managed $15 million on a discretionary basis.

2. **Eugene S. Mason**, age 51, is a resident of Dayton, Maryland. Mason has been SFX's CCO since 2004.

Related Individual

3. **Brian Ourand**, age 53, is a resident of Miami, Florida. Ourand was SFX's Vice President from 2003 to 2007 and President until August 2011, when he was terminated. Ourand is named as a respondent in a separate administrative proceeding relating to his conduct described in this Order.

Background

4. SFX specializes in providing advisory and financial management services to high net-worth individuals, primarily current and former professional athletes. SFX provides clients with a range of services including management of investment portfolios, bill payment, financial planning, and tax consultation and support.

5. Several of SFX's clients had bank and brokerage accounts over which SFX had the power to withdraw and deposit assets. Ourand had discretionary authority to trade in client

[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.

accounts as well as authority over client bank accounts to pay bills, transfer money, and deposit checks. As a result, SFX had custody over the assets in the client accounts.

6. From 2006 to 2011, Ourand misappropriated at least $670,000 from three clients. During this time, Ourand wrote unauthorized checks from client bank accounts payable to "cash" or himself, and wired unauthorized amounts to himself for his own personal use. He also wired money using client credit cards for unauthorized amounts to others for their personal use.

7. In July 2011, Mason learned that Ourand had misappropriated assets when a client complained that he could not use one of his credit cards. SFX and Mason promptly conducted an internal investigation. Ultimately, SFX terminated Ourand and reported his conduct to the criminal authorities.

8. Individuals at SFX, including Ourand, had full signatory power over client bank accounts relating to SFX's bill-paying services. Therefore, there was a significant risk that those individuals could misappropriate client funds. SFX's compliance policies and procedures were not reasonably designed, and were not effectively implemented, to prevent the misappropriation of client funds. As CCO, Mason was responsible under the policies and procedures for implementation of the policies and procedures.

9. In particular, SFX's policies were not reasonably designed to prevent the person authorizing payments that SFX made from client accounts from circumventing secondary review of those payments. Thus, Ourand was able to circumvent secondary review of the payments he authorized from client accounts.

10. In addition, SFX's compliance policy required, among other things, that there be a review of "cash flows in client accounts." SFX and Mason did not effectively implement this provision for the client accounts used for bill-paying services. In addition, SFX did not have a reasonable basis to believe, after due inquiry, that custodians were providing clients with bank statements.

11. SFX's Form ADV, Part 2 brochure filed on March 31, 2011, disclosed that "Client's cash account used specifically for bill paying is reviewed several times each week by senior management for accuracy and appropriateness." This statement was untrue because a review for "appropriateness" indicates a review by senior management other than the person responsible for the relevant transactions, yet no one other than Ourand reviewed the bill-paying accounts over which he had signing authority and from several of which he misappropriated funds. Mason executed Part 1 of the brochure filed concurrently with Part 2.

12. In the midst of an internal investigation following the discovery of Ourand's misappropriation, SFX did not conduct an annual review of its compliance program in 2011. Mason was responsible for ensuring the annual review was completed and was negligent in failing to conduct the annual review.

Violations

13. As a result of the conduct described above, SFX willfully[2] violated Section 206(2) of the Advisers Act, which prohibits fraudulent conduct by an investment adviser.

14. As a result of the conduct described above, SFX failed reasonably to supervise Ourand, within the meaning of Section 203(e)(6) of the Advisers Act.

15. As a result of the conduct described above, SFX willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, which requires that an investment adviser have a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each of its clients for which it maintains funds or securities.

16. As a result of the conduct described above, SFX willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder by the adviser and its supervised persons, and review, no less frequently than annually, the adequacy of the policies and procedures.

17. As a result of the conduct described above, Mason caused SFX's violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

18. As a result of the conduct described above, SFX and Mason willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

Respondents' Remedial Efforts

In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff.

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 203(e), 203(f), and 203(k) of the Advisers Act, it is hereby ORDERED that:

---

2 A willful violation of the securities laws means merely "'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.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

A. Respondent SFX cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(4) and 207 of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder.

B. Respondent Mason cease and desist from committing or causing any violations and any future violations of Sections 206(4) and 207 of the Advisers Act and Rule 206(4)-7 thereunder.

C. Respondents are censured.

D. Respondent SFX shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $150,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). Respondent Mason 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 for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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) Respondents 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 the relevant party 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 C. Dabney O'Riordan, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., 11th Floor, Los Angeles, California 90036.

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 Mason, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Mason 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 Mason 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.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4115 / June 15, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31668 / June 15, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16590

In the Matter of **BRIAN J. OURAND,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940**

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 203(f) and (k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Brian J. Ourand ("Respondent" or "Ourand").

II.

After an investigation, the Division of Enforcement alleges that:

Respondent

1. **Brian J. Ourand**, age 53, is a resident of Miami, Florida. Ourand was SFX Financial Advisory Management Enterprises, Inc.'s ("SFX") Vice President from 2003 to 2007 and President until August 2011, when he was terminated. Ourand holds a Series 65 license.

Related Entity

2. **SFX Financial Advisory Management Enterprises, Inc.** is a Delaware corporation headquartered in Washington, District of Columbia. SFX became registered

with the Commission as an investment adviser on September 21, 1992, but withdrew its registration on September 12, 2012. SFX is currently registered in the District of Columbia. In its most-recent Form ADV filing in March 2014, SFX disclosed that it managed $15 million on a discretionary basis.

Background

3. SFX provides advisory and financial management services to high net-worth individuals, primarily current and former professional athletes. SFX offers a range of services including investment portfolio management, bill payment, financial planning, and tax consultation and support.

4. Several of SFX's clients had bank and brokerage accounts over which SFX had the power to withdraw and deposit assets.

5. Ourand was a relationship manager for several clients. Ourand provided bill-paying services for these clients, and had authority over client bank accounts to pay bills, transfer money, and deposit checks. Ourand also had unauthorized access to some client credit card accounts.

6. Ourand was given discretionary authority to trade in client brokerage accounts and gave clients advice with respect to investing in securities.

7. In July 2011, an SFX employee learned that Ourand had misappropriated assets when a client complained that he could not use one of his credit cards. SFX and the employee promptly conducted an internal investigation. Ultimately, SFX terminated Ourand and reported his conduct to the criminal authorities.

8. From 2006 to 2011, Ourand misappropriated at least $670,000 from clients. During this time, Ourand wrote unauthorized checks from client bank accounts payable to cash or himself and wired unauthorized amounts to himself for his own personal use. He also wired money using client credit cards for unauthorized amounts to others for their personal use. In addition, Ourand forged a client's name and engaged in other deceptive conduct.

Violations

9. As a result of the conduct described above, Ourand willfully violated, or, in the alternative, willfully aided and abetted and caused violations of Sections 206(1) and (2) of the Advisers Act, which make it unlawful for an adviser to employ any device, scheme, or artifice to defraud any client or prospective client; or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

D. Whether, pursuant to Section 203(k) of the Advisers Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 206(1) and (2) of the Advisers Act, whether Respondent should be ordered to pay a civil penalty pursuant to Section 203(i) of the Advisers Act and Section 9(d) of the Investment Company Act, and whether Respondent should be ordered to pay disgorgement pursuant to Section 203 of the Advisers Act and Section 9 of the Investment Company Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

This Order shall be served upon Respondent as provided for in Rule 141(a)(2)(iv) of the Commission's Rules of Practice, 17 C.F.R § 201.141(a)(2)(iv), by any method specified in paragraph (a)(2) of that rule, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country where Respondents may be found.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4114 / June 15, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16588

In the Matter of **Christopher A. Luck,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Christopher A. Luck ("Luck" 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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Sections III.2. and III.4. below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Luck, 58 years old, resides in Scotts Valley, California. From 2003 to the present, Luck has been a managing member of GLR Capital Management, LLC ("GLR Capital"), the general partner of, and unregistered investment adviser to, the GLR Growth Fund, L.P. (the "Fund"), a private investment fund organized as a California limited partnership and based in Scotts Valley, California.

2. On June 10, 2015, a final judgment was entered by consent against Luck, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action entitled Securities and Exchange Commission v. GLR Capital Management, LLC, et al., Civil Action Number 12-CV-2663-EJD, in the United States District Court for the Northern District of California.

3. The Commission's amended complaint alleged that since at least 2005, Luck's business partner, John A. Geringer ("Geringer"), raised in excess of $60 million from investors by misrepresenting the Fund's performance and strategy. The amended complaint further alleged that beginning in or around April 2009, Luck became aware of Geringer's misrepresentations and thereafter, Luck solicited new investors to invest in the Fund by providing false marketing materials and making false statements to potential investors.

4. On July 21, 2014, Luck pleaded guilty to one count of conspiracy to commit mail and wire fraud in violation of Title 18 United States Code, Section 1349; one count of mail fraud in violation of Title 18 United States Code, Section 1341; and one count of securities fraud in violation of Title 15 United States Code, Sections 78j(b) and 78ff and 17 Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2 before the United States District Court for the Northern District of California, in United States v. Christopher Anthony Luck, Criminal Action Number CR-12-0888-002-EJD. On February 27, 2015, an amended judgment in the criminal case was entered against Luck. He was sentenced to a prison term of 130 months followed by three years of supervised release and ordered to pay restitution of $32,880.811.82 and to forfeit $32,880,811.82 to the United States.

5. The counts of the criminal indictment to which Luck pleaded guilty alleged, among other things, that Luck used and employed manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities by telling investors or allowing investors to believe that their investment in the Fund would be used to purchase equities traded on the New York Stock Exchange or NASDAQ when, in fact, he knew no such investments would be made, and that he engaged in a scheme to defraud Fund investors by sending and causing to be sent through the United States Postal Service a misleading investor interest statement to a Fund investor.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent Luck be, and hereby is, barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75171 / June 15, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4113 / June 15, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3663 / June 15, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16587

In the Matter of **Keith E. Rode, CPA,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 102(e)(3)(i) of the Commission's Rules of Practice[1] against Keith E. Rode, CPA ("Rode" or "Respondent").

---

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

> The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting

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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Sections III.2. and III.4. below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Rode, 47 years old, resides in Franklin, Wisconsin and is a certified public accountant licensed to practice in Wisconsin since 2007 and in California from 1994 to February 2015. From 2003 to the present, Rode has been a managing member of GLR Capital Management, LLC ("GLR Capital"), the general partner of, and unregistered investment adviser to, the GLR Growth Fund, L.P. (the "Fund"), a private investment fund organized as a California limited partnership and based in Scotts Valley, California.

2. On June 10, 2015, a final judgment was entered by consent against Rode, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 26 of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action entitled Securities and Exchange Commission v. GLR Capital Management, LLC, et al., Civil Action Number 12-CV-2663-EJD, in the United States District Court for the Northern District of California.

3. The Commission's amended complaint alleged that since at least 2005, Rode's business partner, John A. Geringer ("Geringer"), raised in excess of $60 million from investors by misrepresenting the Fund's performance and strategy. The amended complaint further alleged that beginning in or around April 2009, Rode became aware of Geringer's misrepresentations and thereafter, Rode induced investors to rollover their investments and add to their investments by preparing and mailing false account statements to investors. The amended complaint also alleged that the account statements Rode sent to investors falsely claimed that the Fund investments were "SEC Approved."

---

the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

4. On December 15, 2014, Rode pleaded guilty to one count of mail fraud in violation of Title 18 United States Code, Section 1341 before the United States District Court for the Northern District of California, in United States v. Keith Rode, Criminal Action Number CR-12-0888-EJD.

5. The count of the criminal indictment to which Rode pleaded guilty alleged that Rode engaged in a scheme to defraud Fund investors by sending through the United States Postal Service a misleading investor interest statement to a Fund investor.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Pursuant to Section 203(f) of the Advisers Act, that Respondent Rode is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

B. Pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice, Respondent Rode is suspended from appearing or practicing before the Commission as an accountant.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75176 / June 16, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16592

In the Matter of **Integrated.com, Inc., and Las Vegas Sports Resort, Inc. (f/k/a Samdrew V, Inc.),** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Integrated.com, Inc. and Las Vegas Sports Resort, Inc. (f/k/a Samdrew V, Inc.).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Integrated.com, Inc. (CIK No. 1095704) is a permanently revoked Nevada corporation located in Voorhees, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Integrated.com is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10 registration statement on October 26, 1999.

2. Las Vegas Sports Resort, Inc. (f/k/a Samdrew V, Inc.) (CIK No. 1346860) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Las Vegas Sports Resort is delinquent in its periodic filings with the Commission, having not filed

any periodic reports since it filed a Form 10-Q for the period ended September 30, 2008, which reported a net loss of $119,733 from the company's November 2, 2005 inception to June 30, 2008.

B. DELINQUENT PERIODIC FILINGS

3. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

4. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

5. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75177 / June 16, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16593

In the Matter of **Hornby International, Inc.,** **Impart Media Group, Inc.,** **Integrated Micrometallurgical Systems, Inc., and** **IntelliCapital, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Hornby International, Inc., Impart Media Group, Inc., Integrated Micrometallurgical Systems, Inc., and IntelliCapital, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Hornby International, Inc. (CIK No. 1079642) is a forfeited Delaware corporation located in Vancouver, Washington with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Hornby is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2007, which reported a net loss of $120,559 for the prior nine months.

2. Impart Media Group, Inc. (CIK No. 1104161) is a revoked Nevada corporation located in Seattle, Washington with a class of securities registered with the Commission

pursuant to Exchange Act Section 12(g). Impart Media is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2008, which reported a net loss of $3,939 for the prior nine months.

3. Integrated Micrometallurgical Systems, Inc. (CIK No. 1357577) is a revoked Nevada corporation located in Spokane, Washington with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Integrated Micrometallurgical is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2008, which reported a net loss of $74,310 for the prior nine months.

4. IntelliCapital, Inc. (CIK No. 1386976) is a void Delaware corporation located in Airway Heights, Washington with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). IntelliCapital is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2007, which reported a net loss of $3,134 from the company's January 9, 2007 inception to June 30, 2007.

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9807 / June 16, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16594

In the Matter of **EQUITY TRUST COMPANY,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") against Equity Trust Company ("Respondent" or "Equity Trust").

II.

After investigation, the Division of Enforcement alleges that:

Summary

1. These proceedings arise out of the role of Equity Trust, a custodian of self-directed individual retirement accounts ("IRAs"), for engaging in active marketing and other acts and omissions that were a cause of large-scale offering frauds perpetrated by Ephren Taylor ("Taylor") and Randy Poulson ("Poulson"). The offering frauds orchestrated by Taylor and Poulson involved retirement funds invested through self-directed IRAs custodied by Equity Trust. At least 100 investors transferred their retirement savings from traditional IRAs to self-directed IRAs at Equity Trust and then, with Equity Trust's assistance, used those funds to purchase fraudulent notes issued by entities controlled by Taylor and Poulson. The face value of these notes totaled over $5 million. Most, if not all, of these retirement savings have been lost. In connection with their frauds, Taylor has pled guilty to criminal charges in federal district court, and a judgment was entered against him in an action brought by the Commission. Poulson has been indicted in federal district court.

37 of 120

2. A self-directed IRA allows a person to hold non-traditional investments such as promissory notes or real estate while receiving the favorable tax treatment of an IRA. The self-directed IRA must be held at an account trustee or custodian, such as Equity Trust.

3. Despite the fact that Equity Trust promoted itself as a passive custodian that administered and custodied investments in self-directed IRAs at the request of its customers, Equity Trust took an active role in marketing the Taylor and Poulson offerings. For example, Equity Trust appeared at events hosted by Taylor and Poulson where Taylor and Poulson solicited potential investors and where Equity Trust encouraged individuals to open self-directed IRAs. An Equity Trust salesperson also regularly spoke to individuals referred by Taylor and vouched for Taylor. And Equity Trust sponsored Poulson's dinner events with prospective investors.

4. In addition, Equity Trust ignored numerous red flags concerning Taylor, Poulson, and the securities issued by entities controlled by them. In violation of Equity Trust's policies, many of the investments with Taylor and most of the investments with Poulson lacked proper documentation. Equity Trust's failure to obtain and hold documents reflecting the investments also was contrary to its statements to customers. Further, Equity Trust knew that there were a number of mature and unpaid notes associated with Taylor and Poulson investments. Finally, in the case of Taylor, Equity Trust knew that Taylor made false statements about Equity Trust to an audience of thousands. Despite all of this information, Equity Trust continued to process and service its customers' investments with Taylor and Poulson.

5. As a result of Equity Trust's actions and omissions, Equity Trust caused Poulson's and Taylor's violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933.

Respondent

6. **Equity Trust** is a custodian of self-directed IRAs. Since 2001, Equity Trust has operated as a trust company under authority granted by the State of South Dakota, which conducts biennial examinations of Equity Trust. Equity Trust's principal place of business is in Ohio. According to Equity Trust, it currently has over 130,000 clients and approximately $12 billion of retirement plan assets under administration.

Other Relevant Persons and Entities

7. **Taylor**, age 32, was a resident of Overland Park, Kansas. Taylor was the majority owner and chief executive officer of City Capital Corporation. Taylor's investment scheme involved the issuance of bogus promissory notes through various entities including City Capital Corporation. As part of the scheme, Taylor encouraged investors to open self-directed IRAs with Equity Trust and then invest their retirement savings in his promissory note scheme. On April 12, 2012, the Commission charged Taylor and City Capital Corporation with violations of, inter alia, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder and Section 17(a) of the Securities Act, and on August 8, 2012, the court entered a partial judgment as to Taylor, which enjoined Taylor from future violations of these provisions, and also barred Taylor from acting as an officer or director of a public company. See SEC v. City

Capital Corp., 12 Civ. 1249 (N.D. Ga.). On October 8, 2014, Taylor pled guilty in federal court to one count of conspiracy in connection with the same fraud. See United States v. Taylor, 14 Cr. 217 (N.D. Ga.). On March 17, 2015, Taylor was sentenced to 235 months of imprisonment.

8. **City Capital Corporation ("City Capital")** was a Nevada corporation with its primary office in Raleigh, North Carolina. At all relevant times, Taylor was the majority owner and Chief Executive Officer of City Capital. Taylor, through City Capital and related entities, issued promissory notes, many of which were purportedly secured by those entities, to investors who had accounts at Equity Trust. City Capital did not have a class of securities registered under Section 12, but was subject to Exchange Act Section 15(d) reporting requirements. On February 9, 2012, City Capital filed with the SEC a certification and notice of suspension of duty to file reports. On April 12, 2012, the Commission charged Taylor and City Capital in connection with his promissory note scheme. See SEC v. City Capital Corp., 12 Civ. 1249 (N.D. Ga.). On March 7, 2013, the court entered a default judgment against City Capital.

9. **Poulson**, age 41, resides in Swedesboro, New Jersey. Poulson owned and operated Equity Capital Investments, LLC. Poulson, through Equity Capital Investments, LLC, issued promissory notes purportedly secured by mortgages to investors who had accounts at Equity Trust.

10. **Equity Capital Investments LLC ("ECI")** is a New Jersey limited-liability company owned and operated by Poulson that has its principal place of business in Swedesboro, New Jersey. Poulson, through ECI, issued promissory notes purportedly secured by mortgages to investors who had accounts at Equity Trust.

Background

11. Section 408 of the Internal Revenue Code permits a self-directed IRA to hold non-traditional investments such as promissory notes, unregistered securities, or real estate while receiving the favorable tax treatment of an IRA. See 26 U.S.C. § 408. The Internal Revenue Code also provides that the self-directed IRA must be held at an account trustee or custodian, such as Equity Trust.

12. Fraud promoters who engage in Ponzi schemes or other fraudulent conduct often exploit self-directed IRAs, in part because such accounts allow them to access retirement funds that would otherwise not be available, and to exploit the tax-deferred characteristics of an IRA. Because IRAs carry a financial penalty for premature withdrawal, IRA investors are induced to keep funds in a fraudulent scheme for long periods of time. In addition, self-directed IRA custodians have been used to lend an air of credibility to otherwise fraudulent investments. In recent years, federal and state securities regulators have issued a number of investor alerts warning investors of the risks associated with self-directed IRAs. Equity Trust has been a custodian for numerous investments that turned out to be Ponzi schemes or offering frauds, and Poulson and Taylor were just two examples.

Equity Trust's Role as a Custodian of Self-Directed IRAs

13. During the relevant period, an individual opened a self-directed IRA at Equity Trust and became an Equity Trust customer by filling out an application and signing a custodial agreement. That agreement provided that Equity Trust was "acting solely as a passive custodian to hold IRA assets," meaning that it was not "a fiduciary [] with respect to your IRA account," and that it acted only as the customer's "agent." It also stated that Equity Trust did not "endorse any investment, investment product or investment strategy, [] investment advisor, representative, broker, or other party selected by [the customer]," which was consistent with industry practice. After the account was opened, the customer funded the self-directed IRA by, for example, rolling over funds from a traditional retirement account such as a Roth IRA or 401(k) plan.

14. The Equity Trust customer could then invest funds held in the self-directed IRA in various investments, including promissory notes or real estate. The investment was made through the submission of a written Direction of Investment ("DOI") to Equity Trust by or on behalf of the customer. The DOI directed Equity Trust to transfer funds for a particular investment as described in the DOI, which typically included information such as any applicable interest rate and maturity date, and whether and how the investment was secured. Equity Trust's DOI stated that certain documents evidencing the investment "must" be submitted along with the DOI. For example, the DOI specified that an investment in a promissory note secured by real property required a signed promissory note and a proposed deed of trust or mortgage, and an investment in a promissory note secured by other collateral (such as a company) required a copy of the "original note clearly stating the associated collateral." Attached to the DOI was a statement that included many of the same disclosures in the custodial agreement, including that Equity Trust was a passive custodian and did not endorse any investment or issuer.

15. Equity Trust's marketing material sent to investors also provided that "[a]ll records pertaining to the investment (such as real estate deeds, original notes, operating agreements for LLCs) are retained by Equity Trust for safekeeping." Other marketing material explained the step by step process of investing in promissory notes, which reflected that Equity Trust needed to receive the "promissory note and security documentation" for "safekeeping" prior to funds being sent to the borrower.

Equity Trust's Policies and Procedures

16. Consistent with its standard of care, Equity Trust conducted "primary" and "secondary" reviews of its accounts. Equity Trust's Compliance Department, prior to allowing the transfer of customer funds to an investment, conducted a "primary review," which included a review of the DOI to ensure that the required information was provided and a review of the draft documents reflecting the asset to ensure that they were consistent with the investment described on the DOI. If there were document deficiencies, the documents would be sent to an account support group to resolve before being re-submitted to Compliance. Equity Trust's policies and procedures and statements to investors stated that Equity Trust would retain the final documentation reflecting the investment held in its customer's account.

17. Equity Trust also conducted "secondary reviews" of investments when certain thresholds were met, such as the number of investments with one issuer or total amount invested. The stated purpose of these reviews was to (i) determine whether the investments were "administratively feasible" for Equity Trust, and (ii) assess Equity Trust's "litigation risk due to such investments."

18. As part of a secondary review, Equity Trust's Compliance Department confirmed whether Equity Trust was holding all of the required documents, those documents had been properly executed, and income was being generated as expected. After the secondary review was complete, Compliance would make a recommendation to Equity Trust's Governance Risk Committee ("GRC"), which was made up of senior officers of Equity Trust, including the CEO, and the President and CFO. Compliance would then recommend to the GRC that the investment continue; be placed on the "hold" list; or be placed on the "do not process" list. The policy provided that investments were to be placed on the "hold" list when Equity Trust required additional documentation regarding the investment. The investment could be placed on the "do not process" list for any number of reasons, including when the government has charged the issuer with wrongdoing, or when Equity Trust was unable to obtain account documentation. If placed on "hold" or "do not process," Equity Trust's policies provided that it not process directions to transfer funds to those investments. The GRC met regularly to discuss the results from the secondary reviews and Compliance's recommendations.

19. Equity Trust's "Trust Company Policy" stated that "[o]ur officers and employees should refrain from making any comments regarding the quality of investment decisions made by our customers or their investment advisor, representative, broker or other party." It also stated that "[a] custodian has a duty to avoid conflicts of interest" and that "[Equity Trust] will administer accounts solely in the best interests of beneficiaries."

20. Equity Trust also had policies and procedures relating to Equity Trust attending events hosted by issuers, or events hosted by Equity Trust. Before attending or hosting an event for a third-party speaker, Equity Trust conducted a review of the speaker involved, including a review of presentation material – but not of the investments associated with the speaker. Equity Trust's policies did not preclude it from attending the event of an issuer, or having an issuer attend its event.

Equity Trust's Privacy Disclosures

21. Equity Trust sent its customers a privacy disclosure statement that explained how Equity Trust protected their personal and account information. The statement provided that Equity Trust would only provide account information to third parties under limited, enumerated circumstances (e.g., to a successor custodian). In addition, Equity Trust stated that it would share customers' personal information only in limited circumstances as permitted by law, including requests from law enforcement agencies, the IRS, or organizations that protect the customer's privacy. Nothing in Equity Trust's privacy disclosure statement permitted it to share personal or account information with issuers.

Equity Trust's Fees and Sales Staff

22. Equity Trust charged fees to its customers in connection with its custodial accounts, including account opening fees and annual fees, usually in the hundreds of dollars per account per year. Equity Trust salespeople received commissions, which were a significant part of their compensation, in connection with opening accounts, typically about $50 per account.

23. Equity Trust salespeople were given a monthly account opening goal, which would be part of their employee review. These goals created significant pressure on salespeople to open accounts. Developing relationships with referral sources, such as issuers, was important in meeting those goals.

Taylor's Offering Fraud

24. Taylor publicized himself as a highly successful businessman focused on small, community-oriented businesses. He marketed himself and his investments through a series of traveling seminars and other events that he referred to as a "Wealth Builder Tour" or "Wealth Builder Network."

25. Beginning in at least 2008, Taylor, through City Capital and other entities he owned and operated, raised funds from investors through the issuance of secured and unsecured promissory notes that paid interest rates from approximately 7% to 20% for terms of 1 year to 3 years (the "Taylor Notes"). Taylor and City Capital represented to investors that the funds raised would be used to purchase and support small, local businesses, such as laundries and juice bars, and real estate investments in low-income housing. These representations were false. Instead of using the funds for the stated purposes, Taylor and City Capital misappropriated most of the investor funds for Taylor's personal use, City Capital operating expenses, and repayment of earlier investors, none of which was disclosed. In addition, Taylor and City Capital represented to investors that many of the notes were secured by City Capital or other entities owned by Taylor. Contrary to these representations, almost all of the Taylor Notes were unsecured.

26. On April 12, 2012, the Commission charged Taylor and City Capital with, inter alia, violations of Sections 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the Taylor Notes. See SEC v. City Capital Corp., 12 Civ. 1249 (N.D. Ga.). On August 8, 2012, the court entered a partial judgment as to Taylor, which enjoined Taylor from future violations of these provisions, and also barred Taylor from acting as an officer or director of a public company. On March 7, 2013, the court entered a default judgment against City Capital.

27. On June 10, 2014, Taylor was indicted by a federal grand jury on charges of, inter alia, conspiracy, mail fraud, and wire fraud in connection with offerings of these same promissory notes. See United States v. Taylor, 14 Cr. 217 (N.D. Ga.). Taylor pled guilty to one count of conspiracy on October 8, 2014. On March 17, 2015, Taylor was sentenced to 235 months.

28. On October 29, 2014, the Commission, pursuant to Section 15(b)(6) of the Exchange Act, barred Taylor from associating with any broker, dealer, investment adviser,

municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in any offering of a penny stock. Ephren W. Taylor II, Exchange Act Release No. 73466 (Oct. 29, 2014).

29. For purposes of this action and as further described herein, Taylor and City Capital violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, acting at least negligently, in connection with the offering of Taylor Notes, including by using investor funds in ways contrary to what was represented to investors; representing to investors, including on the DOI, that Taylor Notes were secured when they were not in fact secured; and Taylor making false statements about Equity Trust's relationship with Taylor and City Capital.

Equity Trust's Role As Custodian of Accounts Invested with Taylor

30. Beginning in at least 2008, Equity Trust opened self-directed IRAs for customers who used their retirement funds to invest in Taylor Notes. Approximately 80 Equity Trust customers invested approximately $4.3 million in Taylor Notes, almost all of which has been lost as a result of Taylor's fraud. Equity Trust received fees in connection with accounts invested in Taylor Notes.

Equity Trust Endorsed Taylor and City Capital and Assisted Them in Numerous Ways

31. Equity Trust developed a sales and marketing relationship with Taylor, who then referred investors to Equity Trust. In early 2008, an Equity Trust salesperson ("Salesperson A") was assigned to service accounts associated with Taylor, which included cultivating Taylor as a referral source.

32. Once assigned, Salesperson A communicated regularly with Taylor. Salesperson A emailed Taylor asking for additional referrals of individuals who might open accounts at Equity Trust, and Taylor sent numerous referrals to Salesperson A. In particular, Taylor referred individuals who were hesitant to invest their retirement funds with him. Salesperson A would then communicate with these individuals either by email or telephone. Salesperson A would vouch for Taylor, and the individuals would then invest in Taylor Notes through accounts at Equity Trust. In this way, Salesperson A would "close" referrals for Taylor.

33. For example, in an email dated January 14, 2009, Salesperson A wrote to Taylor that he learned that the broker of an Equity Trust customer recommended to the customer that she not invest in Taylor Notes. Salesperson A then told the customer, "'how can you comment on something you know nothing about....how can this broker comment on real estate when he has never done it.'" The customer responded, "'great point' let's do it." Salesperson A concluded his email to Taylor stating: "I am on it...I will close it." The customer then invested more than $500,000 in Taylor Notes.

34. In addition, Salesperson A provided City Capital and Taylor with status updates on referrals, including whether the referral had opened an account at Equity Trust, the timing of any transfer of funds into the account, and the completion of any such transfer. This information, which was not authorized by customers and was contrary to representations made to customers,

allowed Taylor to know when customer funds would be transferred to City Capital. Salesperson A reached out to Taylor every four to six weeks "[j]ust like a vendor calling a customer to make sure that they are okay and they are happy with the service."

35. In April 2009, Salesperson A emailed Taylor, with a blind carbon copy to Salesperson A's supervisor and another senior Equity Trust employee. "I am here to make it happen for you guys…I still remember the thing you said to me way back in Jan of 2008//……. 'let's make money together'….I look at the phrase everyday."

36. In June 2009, Equity Trust authorized and paid for Salesperson A to visit City Capital's headquarters in Raleigh, North Carolina for two days. While there, Salesperson A trained approximately twelve City Capital salespeople on the benefits of self-directed IRAs, and how to assist Taylor's investors in opening self-directed IRAs at Equity Trust. City Capital personnel then solicited individuals to open accounts at Equity Trust so that they could invest their retirement funds in Taylor Notes. Equity Trust encouraged its staff to attend such training events.

37. Equity Trust, on its own initiative, created and hosted a public "landing page" on its website for potential investors of City Capital, which was visited by customers as early as August 2009. This page displayed the Equity Trust logo at the top and, in bold font, the text "City Capital Corporation – Wealth Builder Network." It then stated, "Welcome to the personalized Equity Trust Company page for members of the Wealth Builder Network. We're pleased to provide you with the support to grow your business and, in turn, help you grow your wealth." The web page included links to Equity Trust's self-directed IRA opening application and DOI, and included the picture of and contact information for Salesperson A. By hosting this public landing page, Equity Trust further legitimized and promoted Taylor.

38. In October 2009, Equity Trust authorized Salesperson A to attend an event sponsored by Taylor at a large church in Atlanta, Georgia. By then Salesperson A knew that Taylor had referred numerous individuals to Equity Trust, that those individuals had opened accounts at Equity Trust and then invested in Taylor Notes, and that Taylor would likely use the event to solicit additional investors. Equity Trust had no prohibition on attending the events of issuers.

39. At the Atlanta event, City Capital personnel distributed Equity Trust marketing materials to attendees (materials that Equity Trust had provided for that purpose). Taylor spoke for over an hour before a large audience about the purported problems with traditional investments in mutual funds and the benefits of alternative socially conscious investments. At the start of his speech, Taylor used Salesperson A's presence to lend an air of legitimacy to himself and City Capital. Taylor introduced Salesperson A as "my banker" and said that "if you have any questions specifically about what I do, I figured, why not just bring the expert [Salesperson A] with me?" Taylor also said that "you know it's something when the bank flies out your banker to hang out with you." At another point in his speech, Taylor referred to Salesperson A as his "qualified, educated, and informed financial professional" who helped him make investment decisions.

40. Salesperson A knew that those statements Taylor made about Salesperson A and Equity Trust were false. Equity Trust and Salesperson A were not Taylor's "banker" and Salesperson A was not providing investment advice to Taylor. Salesperson A purportedly told his supervisor about Taylor's statements at the Atlanta event, but no further action was taken. Equity Trust did not correct Taylor's statements about its role in connection with Taylor. Instead, Equity Trust opened numerous accounts for individuals who had attended the church event and who then invested in Taylor Notes.

Equity Trust Processed Taylor Notes with Significant Documentation Issues and Ignored Other Red Flags

41. Many of Equity Trust's customers' investments in Taylor Notes were not documented in accordance with Equity Trust's policies and procedures. When Taylor investors opened accounts at Equity Trust, their account opening documentation and the DOIs were frequently filled out by a City Capital employee, who then emailed the documents to Equity Trust. At least 30 of the DOIs stated that the promissory notes were secured by City Capital or other Taylor entities, which, according to the DOI, required the submission of an "original note clearly stating the associated collateral." However, the notes City Capital submitted to Equity Trust made no mention of associated collateral and, in fact, were unsecured, which Equity Trust should have identified during its "primary review." Despite this discrepancy and contrary to its policies, Equity Trust processed these investments and continued to process new customer investments in Taylor Notes. In addition, Equity Trust sent its customers account statements that falsely reflected that these notes were secured.

42. In September 2009, Equity Trust initiated a "secondary review" of the Taylor Notes associated with City Capital (but not all of the Taylor entities). During this review, Equity Trust's Director of Compliance expressed concern that numerous Taylor Notes had been mislabeled as secured by Taylor and City Capital personnel on the DOI because the Taylor Notes did not reference any security and no security agreement was included. Despite the Compliance Department's awareness of this issue with the security of the Taylor Notes, Equity Trust continued to process its customers' new investments in Taylor Notes.

43. According to the "secondary review" form for City Capital, by December 23, 2009 at least 17 Taylor Notes were mature and unpaid. As of that date, Equity Trust put City Capital on "hold" status until it could have a further discussion with City Capital regarding the mature and unpaid notes.

44. By January 2010, Equity Trust put City Capital on the "do not process" list because of "poor financial information and high concentration of unsecured notes," and because of City Capital's SEC filings that questioned City Capital's ability to continue as a going concern and identified a lack of operational controls. At no point did Equity Trust inform its customers that it had placed Taylor or City Capital on "hold" or on the "do not process" list or that it was no longer doing business with Taylor based on the aforementioned concerns.

45. By March 2010, Equity Trust knew that two customers with mature and unpaid Taylor Notes (with a total principal amount of $180,000) were having difficulty collecting on the

notes and that the customers' attorney was involved. Despite all of the above red flags, in a number of instances in 2010 (including in April and May 2010), Equity Trust replaced other customers' Taylor Notes with new Taylor Notes. As part of this process, the original notes were deemed satisfied and replaced with new notes (often pursuant to new DOIs), and Equity Trust did not inform these customers of any issues it was aware of concerning the Taylor Notes prior to replacing them.

46. Equity Trust also continued to service the accounts of its customers invested in Taylor Notes, which meant it was charging customers annual fees, including some as recently as 2015, years after Taylor had been charged with fraud.

47. Based on the above conduct, Equity Trust personnel acted negligently and unreasonably, and Equity Trust acted negligently, unreasonably, and violated the standard of care in connection with Taylor, City Capital, and Taylor Notes, by, for example, developing a sales and marketing relationship with Taylor, having ineffective or inadequate policies and procedures, failing to properly train its personnel, and having insufficient staffing.

Poulson's Offering Fraud

48. Like Taylor, Poulson promoted himself as an investor in residential real estate, and he conducted seminars on how to invest in real estate. Beginning in at least 2007, Poulson, through ECI, offered to investors secured promissory notes that paid interest rates from approximately 12% to 20% for terms ranging from six months to several years (collectively, the "Poulson Notes"). These notes were purportedly secured by mortgages of real property. In fact, some were not secured and others were secured by multiple mortgages on the same property. In addition, in many instances, Poulson failed to sign the promissory notes and mortgages. And, in almost every instance, Poulson failed to record the mortgages securing the Poulson Notes, which helped conceal the fraud from investors.

49. In addition, Poulson represented to investors that the funds invested in Poulson Notes would be used to purchase, maintain, and improve the respective properties, including making payments on the existing mortgages. Instead, he misappropriated a significant amount of the funds for his personal use, such as for his own vacations.

50. On May 13, 2014, the United States Attorney's Office for the District of New Jersey filed a criminal complaint against Poulson in connection with the Poulson Notes. On June 5, 2014, a federal grand jury returned an indictment charging Poulson with mail fraud and wire fraud. Poulson entered a plea of not guilty. See United States v. Poulson, 14 Cr. 309 (D.N.J.).

51. For purposes of this action and as further described herein, Poulson and ECI violated Sections 17(a)(2) and 17(a)(3) of the Securities Act in connection with the offering of Poulson Notes, acting at least negligently, including by using investor funds in ways contrary to what was represented to investors, failing to ensure the Poulson Notes were sufficiently secured by mortgages of real property, and failing to record the mortgages.

Equity Trust's Role As Custodian of Accounts Invested with Poulson

52. Beginning in approximately 2007 through late 2011, Equity Trust opened self-directed IRAs for customers who then used their retirement funds to invest in Poulson Notes. Twenty-six Equity Trust customers invested approximately $800,000 with Poulson, almost all of which was lost as a result of Poulson's fraud. Equity Trust received fees in connection with accounts invested in Poulson Notes.

Equity Trust Endorsed Poulson and Assisted Him in Numerous Ways

53. Poulson referred potential investors in the Poulson Notes to Equity Trust. In early 2008, Equity Trust assigned a salesperson ("Salesperson B") to service accounts associated with Poulson, which included cultivating Poulson as a referral source. In December 2008, Salesperson B referred Poulson to Equity Trust's marketing department and stated that they would "work to identify ways Equity Trust can support you from a marketing perspective."

54. In February 2009, Equity Trust's marketing department emailed Salesperson B stating that it was "working" with Poulson "to see if he can be approved as a partner." Equity Trust's marketing department emailed Compliance and the CEO, noting that Poulson was looking for "an exclusive arrangement with Equity Trust." As part of that process, Equity Trust conducted a "guest speaker" review of Poulson, but did not review its customers' investments with Poulson. If it had reviewed investments with Poulson at that time, it would have found that all eight of its customers' investments with Poulson failed to include complete paperwork, most notably the recorded mortgage that secured the note.

55. In April 2009, Salesperson B and an Equity Trust spokesperson attended one of Poulson's purportedly educational seminars at which Salesperson B and the spokesperson each gave a presentation on the benefits of self-directed IRAs, and the spokesperson sold Equity Trust's purportedly educational CD sets that promoted the benefits of self-directed IRAs. Equity Trust split the proceeds of these CD sales with Poulson, which was not disclosed to attendees. In addition, Equity Trust opened self-directed IRAs for seminar attendees who then used the funds in their Equity Trust accounts to invest in Poulson Notes.

56. Several months later, in summer 2009, Poulson asked Equity Trust to sponsor his monthly dinner events at which Poulson would distribute Equity Trust's materials, talk about Equity Trust, and make referrals to Equity Trust. Equity Trust agreed to sponsor Poulson's monthly dinner events for a period of one year, in part because the "relationship [with Poulson] has been bringing us accounts." Around the same time, Poulson agreed to sponsor a session at an Equity Trust conference at a reduced cost. Equity Trust informed Poulson that sponsoring the session meant that he would receive "signage" and "mentions."

57. In May 2010, another Equity Trust salesperson replaced Salesperson B as Poulson's Equity Trust contact and began providing Poulson with status updates on investors, including whether the investor had opened an account, the timing of any transfer of funds into the account, and the completion of any such transfer. Providing this information without customer approval was contrary to Equity Trust's privacy disclosure statement.

Equity Trust Processed Poulson Notes with Significant Documentation Issues and Ignored Other Red Flags

58. Many of the Equity Trust customers' investments in Poulson Notes were not documented in accordance with Equity Trust's policies and procedures. For Poulson Notes that were secured, the DOI required, along with the DOI, the submission of a signed promissory note and proposed deed of trust or mortgage. In many instances, Equity Trust transferred customer funds to Poulson without receiving the required documentation.

59. During Equity Trust's "secondary review" of Poulson Notes in June 2010, it determined that account documentation was missing for all customers who had invested in Poulson Notes – i.e., 25 out of 25 investments in Poulson Notes.[1] Equity Trust attempted to collect the documentation from Poulson, but Poulson failed to provide it. During this same review, Equity Trust noted that four Poulson Notes had matured and were unpaid. In light of these document issues, according to Equity Trust's policies and procedures, Equity Trust should have placed investments in Poulson Notes on "hold" status by at least the time of the "secondary review." However, Equity Trust continued to process new customer investments in Poulson Notes. At no point did Equity Trust seek the missing documentation from customers or notify them of any problems with the Poulson Notes. Equity Trust's failure to require these documents from him allowed him to continue his fraud undetected.

60. Over a year later, in July 2011, Equity Trust conducted another review of Poulson Notes and identified missing account documentation for 25 of 33 of its customers' investments in Poulson Notes and found that 13 Poulson Notes were mature and unpaid. At that point, Equity Trust stopped processing new customer investments in Poulson Notes, although it did not inform its customers that it had taken this step, and it still permitted modifications to be made to Poulson Notes.

61. Based on the above conduct, Equity Trust personnel acted unreasonably, and Equity Trust acted unreasonably and violated the standard of care in connection with Poulson, ECI, and the Poulson Notes, by, for example, developing a sales and marketing relationship with Poulson, having ineffective or inadequate policies and procedures, failing to properly train its personnel, and having insufficient staffing.

Violation

62. Section 8A of the Securities Act provides that the Commission may issue a cease-and-desist order against a person who is a cause of another person's violation, due to an act or omission the person knew or should have known would contribute to such violation. Equity Trust was a cause of Taylor's and Poulson's violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, which make it unlawful for any person in the offer or sale of securities, directly or indirectly, to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances

[1] Specifically, 10 promissory notes were not signed, 9 mortgages were signed but not recorded, and 16 mortgages were not signed and not recorded.

under which they were made, not misleading; and to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchasers. A violation of these provisions may be established by a showing of negligence.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. Whether, pursuant to Section 8A of the Securities Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, whether Respondent should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, whether Respondent should be ordered to pay disgorgement and provide an accounting pursuant to Section 8A(e) of the Securities Act; and whether any remedial relief should be ordered pursuant to Section 8A(a) of the Securities Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Chair White
Commissioner Aguilar
Not participating

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 31674 / June 16, 2015

In the Matter of

JPMORGAN CHASE & CO.
J.P. MORGAN INVESTMENT MANAGEMENT INC.
J.P. MORGAN INSTITUTIONAL INVESTMENTS, INC.
J.P. MORGAN PARTNERS, LLC
J.P. MORGAN PRIVATE INVESTMENTS INC.
J.P. MORGAN ALTERNATIVE ASSET MANAGEMENT, INC.
270 Park Avenue
New York, New York 10017

BEAR STEARNS ASSET MANAGEMENT INC.
270 Park Avenue
New York, New York 10017

BSCGP INC.
270 Park Avenue
New York, New York 10017

CONSTELLATION GROWTH CAPITAL LLC
40 West 57th Street, 32nd Floor
New York, New York 10019

CONSTELLATION VENTURES MANAGEMENT II, LLC
270 Park Avenue
New York, New York 10017

JF INTERNATIONAL MANAGEMENT INC.
21st Floor, Chater House
8 Connaught Road Central
Hong Kong

JPMORGAN DISTRIBUTION SERVICES, INC.
1111 Polaris Parkway
Columbus, Ohio 43240

OEP CO-INVESTORS MANAGEMENT II, LTD.
OEP CO-INVESTORS MANAGEMENT III, LTD.

320 Park Avenue, 18th Floor)
New York, New York 10022)
)
SECURITY CAPITAL RESEARCH & MANAGEMENT)
INCORPORATED)
10 South Dearborn Street, Suite 1400)
Chicago, Illinois 60603)
)
SIXTY WALL STREET MANAGEMENT COMPANY, LLC)
270 Park Avenue)
New York, New York 10017)
)
)
(812-14466))

ORDER PURSUANT TO SECTION 9(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING A PERMANENT EXEMPTION FROM SECTION 9(a) OF THE ACT

JPMorgan Chase & Co. ("JPMC"), J.P. Morgan Investment Management Inc. ("JPMIM"); J.P. Morgan Institutional Investments, Inc. ("JPMII"); J.P. Morgan Partners, LLC ("JPMP"); J.P. Morgan Private Investments Inc.; ("JPMPI") J.P. Morgan Alternative Asset Management, Inc. ("JPMAAM"); Bear Stearns Asset Management Inc. ("BSAM"); BSCGP Inc. ("BSCGP"); Constellation Growth Capital LLC ("Constellation"); Constellation Ventures Management II, LLC ("Constellation II"); JF International Management Inc. ("JFIMI"); JPMorgan Distribution Services, Inc. ("JPMDS"); OEP Co-Investors Management II, Ltd. ("OEP II"); OEP Co-Investors Management III, Ltd. ("OEP III" and together with OEP II, the "OEP Entities"); Security Capital Research & Management Incorporated ("Security Capital"); and Sixty Wall Street Management Company, LLC ("Sixty Wall Management") (collectively, the "Applicants") filed an application on May 20, 2015 requesting temporary and permanent orders under section 9(c) of the Investment Company Act of 1940 ("Act") exempting the Applicants and any other company of which JPMC is or hereafter becomes an affiliated person (together with the Applicants, the "Covered Persons") from section 9(a) of the Act with respect to a guilty plea entered on May 20, 2015, by JPMC in the United States District Court for the District of Connecticut.

On May 20, 2015 the Commission simultaneously issued a notice of the filing of the application and a temporary conditional order exempting the Covered Persons from section 9(a) of the Act (Investment Company Act Release No. 31613) from May 20, 2015 until the Commission takes final action on the application for a permanent order. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued unless a hearing was ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the conduct of the Applicants has been such as not to make it against the public interest or protection of investors to grant the permanent exemption from the provisions of section 9(a) of the Act.

Accordingly,

IT IS ORDERED, pursuant to section 9(c) of the Act, on the basis of the representations and conditions contained in the application filed by J.P. Morgan Chase & Co., et al. (File No. 812-14466) that Covered Persons be and hereby are permanently exempted from the provisions of section 9(a) of the Act, operative solely as a result of the guilty plea, described in the application, entered by JPMC in the United States District Court for the District of Connecticut on May 20, 2015.

By the Commission.

Brent J. Fields
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 31678 / June 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16599

In the Matter of COMMONWEALTH CAPITAL MANAGEMENT, LLC, COMMONWEALTH SHAREHOLDER SERVICES, INC., JOHN PASCO, III, J. GORDON MCKINLEY, III, ROBERT R. BURKE, and FRANKLIN A. TRICE, III, Respondents.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 9(b) AND 9(f) 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 Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Commonwealth Capital Management, LLC ("CCM"), Commonwealth Shareholder Services, Inc. ("CSS"), John Pasco, III, J. Gordon McKinley, III, Robert R. Burke, and Franklin A. Trice, III (collectively, the "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, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections

9(b) and 9(f) 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 Respondents' Offers, the Commission finds[1] that:

SUMMARY

This matter involves the failure of a mutual fund adviser and the funds' board members to satisfy specific duties imposed upon them by Section 15(c) of the Investment Company Act concerning the evaluation of certain fund advisory contracts. As part of the advisory contract approval process, Section 15(c) of the Investment Company Act imposes a duty on the board members of a registered investment company to request and evaluate, and a duty on the adviser to furnish, such information as may reasonably be necessary for the board members to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as an investment adviser to such company.

In connection with one meeting of the Board of Trustees of World Funds Trust ("WFT") and two meetings of the Board of Directors of World Funds, Inc. ("WFI"), then-trustees McKinley, Burke and Trice (collectively, the "Trustees") in the case of WFT, and the then-independent directors (Directors 1, 2, and 3, collectively, "Independent Directors") in the case of WFI, having consulted independent counsel ("Independent Counsel"), requested reasonably necessary information from fund adviser CCM and its principal, Pasco, to evaluate before approving advisory contracts. In certain instances, CCM's and Pasco's written responses did not provide all of the requested information; in certain other instances (pertaining to WFI), the information provided was inaccurate. Thus, the Trustees did not have, and consequently did not evaluate, all the information they requested as reasonably necessary before approving the advisory contracts. Accordingly, CCM and the Trustees violated Section 15(c) of the Investment Company Act, and Pasco caused CCM's violations.

In accordance with fund reporting requirements, following a board's approval or renewal of an advisory contract, the fund's next report to shareholders must discuss, in reasonable detail, the material factors and conclusions that formed the basis for the board's approval or renewal of that contract. CSS, which was contractually responsible for preparing the shareholder reports on behalf of the WFI funds, failed to include such information in one fund's 2010 shareholder report. Consequently, CSS caused WFI to violate Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder.

---

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

RESPONDENTS

1. **Commonwealth Capital Management, LLC** ("CCM"), a Virginia limited liability company headquartered in Richmond, Virginia, has been registered with the Commission as an investment adviser since 2001. At all relevant times, CCM acted as the investment adviser to various mutual funds within WFT and WFI. CCM is owned and operated by its president, Pasco, and is one of the Service Providers.

2. **Commonwealth Shareholder Services, Inc.** ("CSS"), a Virginia corporation headquartered in Richmond, Virginia, is a mutual fund administrator that provides comprehensive services to mutual funds for fund administration. CSS has acted as the fund administrator to WFT and WFI and their respective series since their inception. CSS is one of the Service Providers owned and operated by Pasco, and it shares many of the same personnel with CCM.

3. **John Pasco, III** ("Pasco"), age 70, is a resident of Richmond, Virginia. Pasco owns the Service Providers, including CCM and CSS. He also served as the chairman, president, and sole interested director of WFI from its inception until the company was reorganized in August 2014 when each series became a series of WFT. Since June 2010, Pasco also has served as an interested trustee of WFT. Pasco holds Series 1, 4, 7, 24, and 63 securities licenses.

4. **J. Gordon McKinley, III** ("McKinley"), age 51, is a resident of Bluemont, Virginia. McKinley joined the WFT board in June 2008. He served on the board until his voluntary resignation in May 2010. McKinley previously held Series 7, 63, and 65 securities licenses.

5. **Robert R. Burke** ("Burke"), age 53, is a resident of Richmond, Virginia. Burke joined the WFT board in June 2008. He served on the board until his voluntary resignation in November 2009. Burke holds a Series 65 securities license.

6. **Franklin A. Trice, III** ("Trice"), age 51, is a resident of Richmond, Virginia. Trice was employed by the Service Providers as a managing director of marketing until his voluntary resignation in October 2009. Trice was the chairman, sole interested trustee, and officer[2] of WFT from its inception until he voluntarily resigned in May 2010. Trice previously held Series 6, 7, 63, and 65 securities licenses.

---

[2] As an officer, Trice served as the president and principal executive officer of WFT.

OTHER RELEVANT ENTITIES AND PERSONS

7. **World Funds Trust** ("WFT"), a Delaware statutory trust headquartered in Richmond, Virginia, has been registered with the Commission as an open-end management investment company since 2008. WFT operates a series trust and was composed of up to six series during the relevant period, including three new series funds considered at the October 2008 board meeting (the three new series funds hereinafter referred to as the "WFT Funds"). Several of the WFT series funds were managed by different advisers and sub-advisers.

8. **World Funds, Inc.** ("WFI"), a Maryland corporation headquartered in Richmond, Virginia, has been registered with the Commission as an open-end management investment company since 1997. WFI operated as a series company and was composed of up to 11 series during the relevant period.

9. **The Service Providers**, including among others CCM and CSS, are an affiliated group of companies based in Richmond, Virginia that are owned and operated by Pasco. The Service Providers provide various turnkey services to mutual funds, including investment advisory, fund accounting, fund administration, transfer agent, and distribution services. They have provided services to WFT and WFI and their respective series since their inception.

10. **Sub-adviser A**, a Florida corporation headquartered in Tampa, Florida, and not affiliated with the Service Providers, was at all relevant times registered with the Commission as an investment adviser, but that registration has since been terminated and Sub-adviser A now is registered with the State of Florida. Sub-adviser A acted as the sub-adviser to the WFT Funds at all relevant times as discussed below.

11. **Sub-adviser B**, a New York corporation headquartered in New York, New York, and not affiliated with the Service Providers, was at all relevant times registered with the Commission as an investment adviser. Sub-adviser B acted as the sub-adviser to one WFI fund ("WFI Fund") at all relevant times as discussed below.

12. **Director 1** served as an independent director of WFI from its inception until the company was reorganized and each of its series became a series of WFT, which is overseen by a board of trustees that does not include Director 1.

13. **Director 2** served as an independent director of WFI from its inception until the company was reorganized and each of its series became a series of WFT, which is overseen by a board of trustees that does not include Director 2.

14. **Director 3** served as an independent director of WFI from its inception until the company was reorganized and each of its series became a series of WFT, which is overseen by a board of trustees that does not include Director 3.

FACTS

Background

15. Pasco formed the Service Providers as a turnkey investment company platform for advisers that want to manage small to mid-size mutual funds without having to administer the day-to-day operations of a fund, including the management of corporate governance and regulatory compliance.

16. WFT is registered with the Commission as an open-end series investment company. It was formed by Pasco to allow unaffiliated advisers to manage the portfolios of one or more mutual fund series. During the relevant period, WFT was composed of up to six series, several of which were managed by different advisers and sub-advisers.

17. At all relevant times, WFT utilized the services provided by the Service Providers, including, among others, fund administration provided by CSS. CCM served as the investment adviser for several of WFT's series, including the WFT Funds. CCM did not make the day-to-day investment decisions for the funds; instead, it contracted out those services to Sub-adviser A.

18. During the relevant period, WFT's board consisted of the three Trustees. Trice, the sole interested trustee and chairman of WFT, received no compensation for his service as a Trustee or officer, but he was compensated by the Service Providers for his services to them. McKinley and Burke (together, the "Independent Trustees") were not "interested persons" as that term is defined under Section 2(a)(19) of the Investment Company Act. McKinley and Burke had not previously served as a director or trustee of a registered investment company, and they joined the board after confirming that Independent Counsel would advise them. For the benefit of shareholders, McKinley and Burke voluntarily waived their compensation as trustees for the entire period they served on the board.

19. WFI registered with the Commission as an open-end management investment company in 1997. It operated as a series company and was composed of up to 11 series during the relevant period. WFI was reorganized in August 2014 when each of its series became a series of WFT.

20. At all relevant times, WFI utilized some of the services provided by the Service Providers, including, among others, fund administration provided by CSS. CCM served as the investment adviser for the WFI Fund. CCM did not make the day-to-day investment decisions for that fund; instead, it contracted out those services to Sub-adviser B.

21. During the relevant period, WFI's board consisted of four individuals: Pasco, Director 1, Director 2, and Director 3. Pasco was the sole interested director and chairman of WFI; Director 1, Director 2, and Director 3 (together, the "Independent Directors") were not "interested persons" as defined by Section 2(a)(19) of the Investment Company Act.

Requirements of Section 15(c) of the Investment Company Act and Related Fund Reports and Disclosures

22. Section 15(c) of the Investment Company Act makes it unlawful for a registered investment company to enter into or renew any advisory contract unless the terms of the contract are approved by a majority of the fund's independent directors. As part of the approval process, Section 15(c) imposes a duty on the directors to request and evaluate, and a duty on the adviser to furnish, such information as may reasonably be necessary for the directors to evaluate the terms of the adviser's contract.

23. Section 15(c) does not define what may be "reasonably necessary" to evaluate a contract's terms, but that analysis may be informed by certain factors – known as the *Gartenberg* Factors. *See* Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies, Investment Company Act Release No. 26486 at n.31 (June 23, 2004) (adopting release). These factors include, where applicable: (i) the adviser's cost in providing the services; (ii) the nature and quality of the adviser's services; (iii) the extent to which the adviser realizes economies of scale as the fund grows larger; (iv) the profitability of the fund to the adviser; (v) fee structures for comparable funds; (vi) fall-out benefits accruing to the adviser or its affiliates; and (vii) the independence, expertise, care, and conscientiousness of the board. *Gartenberg v. Merrill Lynch Asset Mgmt., Inc.*, 694 F.2d 923, 930 (2d Cir. 1982); *see also Jones v. Harris Assocs.*, 559 U.S. 335 (2010) (adopting the *Gartenberg* Factors). As discussed below, the WFT and WFI boards used the "*Gartenberg* Factors" to evaluate advisory contracts.

24. The Commission specified factors similar to the *Gartenberg* Factors in fund reporting requirements designed to better inform shareholders about a board's evaluation process under Section 15(c). In particular, when a fund board approves or renews any advisory contract, the fund's next shareholder report must discuss, in reasonable detail, the material factors and conclusions with respect thereto that formed the basis for the directors' approval or renewal of that contract. *See* Form N-1A, Item 27(d)(7) [formerly denominated as Item 21 and, more recently, 27(d)(6)]. Generally, the shareholder report must discuss factors including, but not limited to: (1) the nature, extent, and quality of the services to be provided by the investment adviser; (2) with respect to an operating fund, the investment performance of the fund and the investment adviser; (3) the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the fund; (4) the extent to which economies of scale would be realized as the fund grows; and (5) whether fee levels reflect these economies of scale for the benefit of fund investors. *See* Form N-1A, Item 27(d)(7)(i). Furthermore, Form N-1A requires that the shareholder report indicate whether the board relied upon fee comparisons with other funds or types of clients in approving the contract and, if so, describe the comparisons that were relied upon and how they assisted the board in concluding that the contract should be approved. *Id.*

25. The Commission designed such disclosures to "encourage funds to provide a meaningful explanation of the board's basis for approving an investment advisory contract," which "in turn, may encourage fund boards to consider investment advisory contracts more

carefully." Investment Company Act Release No. 26486. As the Commission observed, "[i]t would be difficult for a board to reach a final conclusion as to whether to approve an advisory contract without reaching conclusions as to each material factor." *Id.* The Commission also noted, however, that any of the enumerated factors might not be relevant to the approval of a contract, in which case "the discussion must note this and explain the reasons why that factor is not relevant." *Id.*

<u>The October 2008 Approval of the WFT Funds' Advisory Contracts</u>

World Funds Trust's 15(c) Process

26. On October 1, 2008, at the second meeting of the WFT Board of Trustees, the Trustees evaluated and approved advisory contracts for the WFT Funds. Each fund was advised by CCM and sub-advised by Sub-adviser A.

27. In the interest of limiting the operating expenses of the WFT Funds, the Trustees also approved an expense limitation agreement ("ELA") pursuant to which CCM agreed to waive fees above a certain threshold and to assume other operating expenses to protect shareholders in the event that assets decline. During the entire relevant period, the WFT Funds did not pay any advisory fees due to the fee waiver. In addition, CCM reimbursed the vast majority of operating expenses incurred by the WFT Funds.[3]

28. Prior to the October 1 meeting, the Trustees – with the assistance of Independent Counsel[4] and CSS – requested certain materials and information from CCM and Sub-adviser A as part of the 15(c) process. Specifically, the Trustees, acting through CSS, requested a copy of CCM's and Sub-adviser A's most current Form ADV Parts I and II, compliance manuals, code of ethics, and current financial statements. The Trustees also requested that CCM and Sub-adviser A complete a questionnaire prepared by Independent Counsel that contained numerous questions about each adviser's operations, compensation, and compliance procedures. The questionnaire also requested information concerning the *Gartenberg* Factors, including a request for comparative fee information. The questionnaire advised Pasco that the board's approval of the advisory contract would be based, in part, on CCM's responses to the questionnaire and the documents provided.

29. CSS compiled the various documents, questionnaire responses, and other relevant materials into a "Board Book." Pasco reviewed and certified the questionnaire responses on behalf of CCM. The Board Book contained a detailed memorandum to the Independent Trustees prepared by their Independent Counsel that described their Section 15(c) duties concerning the approval of the WFT Funds' advisory contracts. The Trustees

---

3 Two of the WFT Funds closed in July 2009.

4 Legal counsel "can assist directors . . . [in] evaluating legal issues with an independent critical eye. Often, independent counsel can draw on their experience and knowledge to identify best practices of other funds that might be appropriate for directors to adopt for their fund." *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24082 (Oct. 14, 1999) (proposing release).

referred to this memorandum as the "*Gartenberg* Memo." The *Gartenberg* Memo generally discussed the Independent Trustees' duties to request and evaluate information from the advisers and sub-advisers and advised them that, among other things, they should consider a comparison of the management fees paid by comparable mutual funds in determining whether an adviser's fee is reasonable. The *Gartenberg* Memo further counseled the Independent Trustees in arriving at their business judgment to consider "a comprehensive description of the investment advisory and other services provided to the funds by the adviser or its affiliates;" the adviser's costs and profitability; economies of scale; and the nature and amount of indirect benefits received by CCM and its affiliates. The *Gartenberg* Memo referenced certain court decisions that highlight directors' discretion to make good faith judgments as to the information required and the weight to be given to information considered.

30. The Board Book was sent to, and reviewed by, the Trustees and Independent Counsel in advance of the October 1, 2008 board meeting.

31. The Trustees and Pasco attended the board meeting in person while Independent Counsel participated telephonically. During the October 1 meeting, the Trustees consulted with Independent Counsel regarding the information provided, discussed their comments and questions concerning the information provided in the Board Book, and relied upon the guidance received from Independent Counsel. Independent Counsel prepared the minutes from counsel's contemporaneous notes to memorialize what transpired at the meeting.

CCM Did Not Furnish, and WFT's Board Did Not Have, All the Information the Board Requested as Reasonably Necessary to Evaluate the Advisory Contracts

Comparable Fund Fees

32. As part of the 15(c) process, the Trustees requested that CCM and Pasco submit comparative fee information along with the completed 15(c) questionnaire. There is no documentary evidence that CCM furnished information regarding the fees paid by comparable funds.

33. Notwithstanding the fact that CCM failed to provide the requested comparative fee information, the Trustees approved the advisory contracts because they considered the proposed advisory fees to be within an appropriate range.

Nature and Quality of Services Provided

34. The Trustees requested various information to evaluate the nature and quality of services provided by CCM. The materials CCM provided to the Trustees in response to the 15(c) questionnaire did not permit a sufficient evaluation of the nature and quality of such services. CCM provided only limited disclosures that left unclear what services it intended to provide versus those that would be provided by others. The advisory and sub-advisory contracts described the adviser's and sub-adviser's proposed duties using nearly identical language (except that the sub-adviser's duties were subject to CCM's "supervision"). CCM's written responses to the 15(c) questionnaire explained that the sub-adviser was responsible for portfolio management and otherwise referred the Trustees to Sub-adviser A's response to the questionnaire. Sub-adviser A's response, however, did not elaborate on CCM's services. After reviewing the materials, the Trustees did not ask for, and CCM did not provide, additional materials to clarify what services CCM would perform in exchange for its proposed fee.

35. The 15(c) questionnaire also requested CCM to discuss what services of a material nature it would provide to WFT. CCM responded that it would conduct oversight of Sub-adviser A through quarterly and annual due diligence reviews. CCM also stated that CSS would track the funds' portfolios to ensure compliance with stated investment limitations in the prospectus and statement of additional information. According to Pasco's response on behalf of CCM, CSS would then report its findings to the Trustees on at least a quarterly basis. CCM, however, did not articulate what portfolio management compliance services it would perform itself, and the Trustees did not request additional materials to clarify the matter. Although during the relevant period the WFT Funds did not pay any advisory fees and CCM reimbursed the majority of the operating expenses incurred pursuant to the ELA, the Trustees were obligated to evaluate CCM's services as compared to the fees provided for in the advisory contracts.

36. The Trustees received incomplete responses to the 15(c) questionnaire seeking information about CCM's services, and did not request or receive additional materials. Thus, the Trustees approved the WFT Funds' advisory contracts without having all the information they requested as reasonably necessary to evaluate the advisory contracts.

The August 2009 Approval of the WFI Fund Advisory Contract

World Funds Inc.'s 15(c) Process

37. On August 27, 2009, the WFI Board of Directors held its quarterly meeting to evaluate and approve the advisory and sub-advisory contract renewals for, among other funds, the WFI Fund advised by CCM and sub-advised by Sub-adviser B.

38. Just as it did for WFT, CSS compiled various materials into a Board Book, including a *Gartenberg* Memo, CCM's and Sub-adviser B's 15(c) questionnaires, codes of ethics, Form ADV Parts I and II, financials, and advisory fee and performance tables.

39. The 15(c) questionnaire prepared by Independent Counsel contained numerous questions about each adviser's operations, compensation, and compliance

procedures; the questionnaire also requested information concerning the *Gartenberg* Factors. The cover letter to the questionnaire stated "we are writing to request that the adviser provide the Board with the information reasonably necessary for the Board to fulfill its obligation under section 15(c). The Board believes that such information includes your responses to the items requested below."

40. The *Gartenberg* Memo generally discussed the Independent Directors' duties to request and evaluate information from CCM and Sub-adviser B and advised them that, among other things, they should consider performance data and a comparison of the management fees paid by mutual funds in relevant peer groups in determining whether an adviser's fee is reasonable. The *Gartenberg* Memo further counseled the Independent Directors to consider "a comprehensive description of the investment advisory and other services provided to the funds by the adviser or its affiliates;" the adviser's costs and profitability; economies of scale; and the nature and amount of indirect benefits received by CCM and its affiliates. The Independent Directors reviewed the *Gartenberg* Memo and discussed it with Independent Counsel.

41. The Board Book was sent to the Independent Directors and Independent Counsel for their review prior to the board meeting. The Independent Directors met with Independent Counsel in executive session the evening before the board meeting. The Independent Directors, Pasco, and Independent Counsel attended the board meeting in person. Independent Counsel prepared the minutes from counsel's contemporaneous notes to memorialize what transpired at the meeting.

CCM Did Not Furnish, and WFI's Board Did Not Have, All the Information the Board Requested as Reasonably Necessary to Evaluate the Advisory Contract

Comparable Fund Analysis

42. CCM used a standard industry database to provide fee information for share classes that were comparable in size to WFI Fund's class A shares and that had an investment strategy that was comparable to the WFI Fund. To avoid claims of "cherry-picking" exemplar funds, CCM did not edit the tables to delete share classes of funds that were not directly comparable to the WFI Fund, and therefore the chart contained numerous inapt comparisons. The following table (also reproduced in more legible format at Appendix A), was used for comparing the WFI Fund's advisory fee and total expense ratio against other supposedly comparable funds.

Expense Comparison of the Eastern European Equity Fund to the Lipper Emerging Markets Category of Funds

$25M-$45M in Total Net Assets

Fund Name	L Cls	Latest Total Net Assets (Mil. $)	Latest Max 12b-1	Latest Total Expense Ratio	Net Prospectus Expense Ratio	Latest Advisory Fees Amount (000 $) Latest Data	Latest Mgt Fee Amount (000 $) Latest Data	Latest Advisory Fees % Ratio Latest Data	Latest Non 12b-1Exp % Ratio Latest Data	Latest Sub Adv Fees % Ratio Latest Data
American Funds NWld;R-1	EM	25.2	1	1.74	1.79	21	81	0.526	0.188	0
SPDR S&P Em Mkts Sm Cp	EM	25.4	0.25		0.65					
Principal:Intl EM;R-5	EM	25.6		1.52	1.52	302	330	1.192	0.15	0
Allianz:NACM EM Opp;A	EM	26.1	0.25	1.77	1.78	19	45	0.446		0
Virtus:Emg Mkt Oppty;A	EM	27	0.25	1.79	1.67	42	46	1.032		0
GMO:Emerg Cntry;M	EM	27.1	1	1.48	1.41	248	325	0.65		0
Third Mil Russia;A	EM	27.1	0.25	2.75	1.34	1888	2116	1.63		0
Nich-App Intl:EM Mkt;I	EM	27.3		1.29	1.32					
Causeway:Emer Mkt;Inst	EM	27.7		1.35	1.35	-62	-60	-0.855		0
ING:Em Ctry;I	EM	27.9		1.63	1.54	401	433	1.25		0.7
Russell:Emerging Mkts;C	EM	28.5	0.75	2.66	2.62	515	643	1.15	0.25	0
Legg Mason P:EM Eqty;A	EM	28.8	0.25	1.55	1.6	290	290	0.845		0.575
Marshall:Emg Mk Eq;Inst	EM	29.1			1.25					
AIM Develpng Mkts;Y	EM	29.2			1.35					
Wasatch:Emg Mkt SC	EM	30.1		2.1	2.12					
Aberdeen:Devel Mkts;A	EM	30.3	0.25	1.7	1.86	553	625	1.113	0.089	0
UBS PACE I Emrg;Y	EM	30.9		1.5	1.4	257	257	1.1		0
Eastern Eur Equity;A	EM	31	0.25	2.56	2.72	883	1024	1.25		0.6
American Funds NWld;5B	EM	32	1	1.87	1.87	158	158	0.526	0.237	0
Threadneedle Emg Mkt;B	EM	33.8	1	2.62	2.62	911	976	1.105		0
Pac Li:Emerg Mkts;A	EM	35.9	0	1.42	1.36	-12	128	-0.03	0.476	0.23
RS Inv:Emerging Mkts;K	EM	36	0.65	1.94	1.94	266	266	0.983	0.186	0
Templeton Dev Mkts;R	EM	36	0.5	2.11	2.12	340	364	1.209		0
Van Kampen Emerg;B	EM	36.7	1	2.59	2.59	1016	1016	1.241		0
MFS Emerg Mkts Eq;C	EM	38.2	1	2.44	2.45	638	649	1.05		0
Amer Cent:Em Mkts;Inst	EM	39.1		1.46	1.62	1506	1505	1.59		0
Schwab Cap:FEmMkt;Inst	EM	39.7		0.61	0.63					
Seligman Gl:Emrg Mkt;A	EM	41.3	0.25	2.35	2.35	741	741	1.147		0.65
Eaton Vance Emrg Mkt;A	EM	41.4	0.5	2.37	2.27	1174	1480	0.96		0
Van Kampen Emerg;C	EM	41.7	1	2.59	2.59	844	844	1.241		0
AIM Develpng Mkts;B	EM	42	1	2.34	2.35	709	709	0.898		0
Goldman:BRIC;I	EM	42.5		1.5	1.5	166	166	1.01		0
Amer Cent:NT Em Mkt;Inst	EM	43.1		1.52	1.67	128	128	1.583		0
SA Funds:Emerg Mkts Val	EM	43.2		1.45	1.45					
Legg Mason Gl:EM;S	EM	43.3			1.25					
Laudus Mo EM;Inst	EM	43.8		1.45	1.45					
DWS Em Mkts Eqty;Inst	EM	44.5		1.38	1.38					
Franklin India Gr;Adv	EM	45		1.4	1.4					
AVERAGE/COUNT		154936	0.611	1.713	1.7	1073394	1172140	0.949	0.209	
MEDIAN		25.3	0.5	1.7	1.66	561	643	1	0.229	

The data represented is based on the Lipper Emerging Markets Classification of Funds. As of 6.30.09, there were 400 funds in the Lipper Emerging Markets universe.

43. Included in the table were: (i) fund share classes with different distribution fee structures; (ii) assets at a share-class level rather than total-fund level; (iii) different types of funds (including an exchange-traded fund, or index-based "ETF," and an unmanaged index fund – the WFI Fund is an actively managed fund); and (iv) funds with different fee structures (including funds with a combined advisory/administration fee – the WFI Fund has a separate advisory and administration fee). Furthermore, certain information in the table was missing or incomplete.

44. CCM provided two additional charts that compared the WFI Fund's expense ratio and advisory fee to those of selected funds from the table described above. These charts provided only limited information for evaluating the WFI Fund's expense ratio and advisory fee. The first chart compared the total expense ratio of the WFI Fund to four CCM-selected funds with different share classes, two of which had an expense ratio that included a 1.00% 12b-1 fee, while the WFI Fund class A had a 12b-1 fee of .25%. The chart also erroneously depicted one unaffiliated fund's 12b-1 fee rather than its expense ratio.

45. The second chart compared the WFI Fund's advisory fee to the same four funds, two of which had a combined advisory/administration fee. Because the WFI Fund had a separate administration fee, a true advisory fee comparison required adding the WFI Fund's separate administration fee (0.20%) to its advisory fee (1.25%). While the table reflected that the WFI Fund's advisory fee was the highest advisory fee, including the administration fee with the advisory fee would have made the WFI Fund's advisory fee appear even higher by comparison.

Profitability and Allocation of Costs and Expenses

46. The Independent Directors' 15(c) questionnaire also asked that CCM provide "all reasonably available financial information," including two years of financial statements, to assist the board in assessing the adviser's profitability. In particular, the questionnaire asked CCM to describe the basis and methodology for allocating indirect costs, overhead, and other costs to the fund.

47. Rather than providing two years of financial statements, CCM provided an income statement (and no balance sheet) for only one year and a profitability chart that estimated overhead and other expenses for the same year. Although requested in the Independent Directors' 15(c) questionnaire, CCM also did not provide any written description of its allocation methodology.

Expense Limitation Agreement

48. Since November 2004, the WFI Fund had in place an ELA that capped the fund's total annual operating expenses (including advisory fee) at 2.75% of net assets. Under the terms of the ELA, CCM agreed to waive or limit its advisory fee if such expenses exceeded 2.75%.

49. As part of the 15(c) questionnaire, the Independent Directors requested that CCM provide the dollar amount of fees waived since the last renewal of the advisory contract. CCM and Pasco responded that no fees were waived despite the fact that CCM waived a portion of its advisory fee in connection with the ELA during the relevant period.

Economies of Scale

50. The 15(c) questionnaire asked CCM to address the adequacy and appropriateness of any WFI Fund breakpoints. CCM informed the Independent Directors that the fund had breakpoints and that the breakpoints listed in the advisory contract were appropriate. In fact, however, although all parties believed that earlier breakpoints had been provided for in the current agreements at the time of an earlier reorganization, the proposed breakpoints had been omitted from CCM's contract. The fees payable by the WFI Fund never exceeded the fee levels believed to be in place.

CSS Failed to Include a Summary of the Section 15(c) Evaluation Process in a 2010 WFI Fund Shareholder Report

51. As set forth in the instructions on Form N-1A (Item 27(d)(6)(i)), the WFI Fund's annual report was required to discuss the material factors and conclusions that formed the basis for the Independent Directors' approval of the advisory contracts voted on at the preceding board meeting.

52. As the fund administrator to all series of WFI, CSS was contractually responsible for preparing the series' shareholder reports, including those portions of the reports that included a discussion of the Independent Directors' Section 15(c) evaluation process as required by Item 27(d)(6)(i) of Form N-1A. CSS inadvertently omitted the text containing such information in the WFI Fund's annual report filed on March 11, 2010, thereby causing WFI to file an incomplete report.

<u>The August 2010 Approval of the WFI Fund Advisory Contracts</u>

53. The WFI Board held its next annual 15(c) review of CCM's and Sub-adviser B's advisory and sub-advisory contracts for the WFI Fund on August 25, 2010. As was the case for the 2009 review, a Board Book was sent to the Independent Directors and Independent Counsel in advance of the meeting, containing among other things, the *Gartenberg* Memo, the 15(c) letter and the completed questionnaire, copies of Forms ADV, financial statements, and CSS-generated advisory fee and performance charts.

54. The performance and fee comparison charts provided by CCM had the same comparisons and deficiencies as the 2009 charts. CCM provided a table of fees and expenses so that the board could evaluate the adviser's profitability, but CCM again did not fully explain its entries or its methodology for allocating expenses and provided only a single year's financial statements.

<u>VIOLATIONS</u>

Respondents CCM, McKinley, Burke, and Trice Violated Section 15(c) of the Investment Company Act, and Pasco Caused CCM's Violations

55. Section 15(c) of the Investment Company Act imposes a duty on the board members of a registered investment company to request and evaluate, and a duty on the adviser to furnish, such information as may reasonably be necessary for the directors to evaluate the terms of an advisory contract. That provision further requires that a majority of a fund's independent directors approve the advisory contract between the investment adviser and the fund. As discussed above, CCM did not provide all the necessary information requested by the boards (and in some instances, as to WFI, included inaccurate information). McKinley, Burke, and Trice did not follow up to obtain such information; hence, they approved CCM's initial advisory contracts for the WFT Funds without having all the information they requested as reasonably necessary for their evaluation. Accordingly, CCM,

McKinley, Burke and Trice willfully[5] violated Section 15(c) of the Investment Company Act, and Pasco caused CCM's violations.

Respondent CSS Caused WFI's Violation of Section 30(e) of the Investment Company Act and Rule 30e-1 Thereunder

56. Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder require registered investment companies to send shareholders semi-annual and annual reports that contain such information as the Commission may require by rule or regulation. The Commission expressly designed Form N-1A "to provide investors with information that will assist them in making a decision about investing in an investment company." *See* Form N-1A. Item 27(d)(6) of Form N-1A further requires that, if a fund's board approved any investment advisory contract during the fund's most recent fiscal half-year, the next shareholder report must contain a discussion, in reasonable detail, concerning "the material factors and the conclusions with respect thereto that formed the basis for the board's approval." As a result of the conduct described above, CSS caused WFI's violation of Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder by failing to provide the discussion of the 15(c) process in the March 2010 shareholder report, as required by Item 27(d)(6) of Form N-1A.

IV.

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

Accordingly, pursuant to Sections 9(b) and 9(f) the Investment Company Act, it is hereby ORDERED that:

A. Respondents CCM, Pasco, McKinley, Burke and Trice cease and desist from committing or causing any violations and any future violations of Section 15(c) of the Investment Company Act;

B. Respondent CSS cease and desist from committing or causing any violations and any future violations of Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder;

C. Respondents McKinley, Burke, and Trice each shall pay a civil money penalty in the amount of $3,250 to the Securities and Exchange Commission within 10 days of the entry of this Order; and

---

[5] A willful violation of the securities laws means merely "'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.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

D. Respondents CCM, CSS, and Pasco, jointly and severally, shall pay a civil money penalty in the amount of $50,000 to the Securities and Exchange Commission within 10 days of the entry of this Order.

If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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) Respondents 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 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 Brian Privor, Senior Counsel, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5546.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

APPENDIX A

"Expense Comparison of the Eastern European Equity Fund to the Lipper Emerging Markets Category of Funds

$25M-$45M in Total Net Assets

Fund Name	L Cls	Latest Total Net Assets (Mil. $)	Latest Max 12b-1	Latest Total Expense Ratio	Net Prospectus Expense Ratio	Latest Advisory Fees Amount (000 $) Latest Data	Latest Mgt Fee Amount (000 $) Latest Data	Latest Advisory Fees % Ratio Latest Data	Latest Non 12b-1Exp % Ratio Latest Data	Latest Sub Adv Fees % Ratio Latest Data
American Funds NWld;R-1	EM	25.2	1	1.74	1.79	81	81	0.526	0.188	0
SPDR S&P Em Mkts Sm Co	EM	25.4	0.25		0.65					
Principal:Intl EM;R-5	EM	25.6		1.52	1.52	302	330	1.192	0.15	0
Allianz:NACM EM Opp;A	EM	26.1	0.25	1.77	1.78	19	45	0.446		0
Virtus:Emg Mkt Oppty;A	EM	27	0.25	1.79	1.67	42	46	1.032		0
GMO:Emerg Cntry;M	EM	27.1	1	1.48	1.41	248	325	0.65		0
Third Mil Russia;A	EM	27.1	0.25	2.75	1.34	1888	2116	1.63		0
Nich-App Inst:EM Mkt;II	EM	27.3		1.29	1.32					
Causeway:Emer Mkt;Inst	EM	27.7		1.35	1.35	-62	-60	-0.855		0
ING:Em Ctry;I	EM	27.9		1.63	1.54	401	433	1.25		0.7
Russell:Emerging Mkts;C	EM	28.5	0.75	2.66	2.62	616	643	1.15	0.25	0
Legg Mason P:EM Eqty;A	EM	28.8	0.25	1.55	1.6	290	290	0.845		0.575
Marshall:Emg Mk Eq;Inst	EM	29.1			1.25					
AIM Develpng Mkts;Y	EM	29.2			1.35					
Wasatch: Emg Mkt SC	EM	30.1		2.1	2.12					
Aberdeen:Devel Mkts;A	EM	30.3	0.25	1.7	1.86	553	625	1.113	0.089	0
UBS PACE I Emrg;Y	EM	30.9		1.5	1.4	257	257	1.1		0
Eastern Eur Equity;A	EM	31	0.25	2.56	2.72	883	1024	1.25		0.6
American Funds NWld;5B	EM	32	1	1.82	1.82	158	158	0.526	0.237	0
Threadneedle Emg Mkt;B	EM	33.8	1	2.62	2.62	911	976	1.105		0
Pac Lf:Emerg Mkts;A	EM	35.9	0	1.42	1.36	-12	128	-0.03	0.426	0.23
RS Inv:Emerging Mkts;K	EM	36	0.65	1.94	1.94	266	266	0.983	0.186	0
Templeton Dev Mrkt;R	EM	36	0.5	2.11	2.12	340	364	1.208		0
Van Kampen Emerg;B	EM	36.7	1	2.59	2.59	1016	1016	1.241		0
MFS Emerg Mkts Eq;C	EM	38.2	1	2.44	2.45	638	649	1.05		0
Amer Cent:Em Mkts;Inst	EM	39.1		1.46	1.62	1505	1505	1.59		0
Schwab Cap:FEmMkl;Inst	EM	39.7		0.61	0.63					
Seligman Gl:Emrg Mkt;A	EM	41.3	0.25	2.35	2.35	741	741	1.147		0.65
Eaton Vance Emrg Mkt;A	EM	41.4	0.5	2.37	2.27	1174	1480	0.96		0
Van Kampen Emerg;C	EM	41.7	1	2.59	2.59	844	844	1.241		0
AIM Develpng Mkts;B	EM	42	1	2.34	2.35	709	709	0.896		0
Goldman:BRIC;I	EM	42.5		1.5	1.5	166	166	1.01		0
Amer Cent:NT Em Mkt;Inst	EM	43.1		1.52	1.67	128	128	1.583		0
SA Funds:Emerg Mkts Val	EM	43.2		1.45	1.45					
Legg Mason Gl:EM;IS	EM	43.3			1.25					
Laudus Mo EM;Inst	EM	43.8		1.45	1.45					
DWS Em Mkts Eqty;Inst	EM	44.5		1.38	1.38					
Franklin India Gr;Adv	EM	45		1.4	1.4					
AVERAGE/COUNT		154906	0.611	1.713	1.7	1073394	1172140	0.949	0.209	
MEDIAN		25.3	0.5	1.7	1.65	561	643	1	0.229	

The data represented is based on the Lipper Emerging Markets Classification of Funds. As of 6.30.09, there were 400 funds in the Lipper Emerging Markets universe.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75180 / June 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16595

In the Matter of **Neologic Animation Inc.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT [1]

1. Neologic Animation Inc. ("NANI") (CIK No. 1371310) is a revoked Nevada corporation located in Zhejiang, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). NANI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2013, which reported a net loss of $68,112 for the prior nine months. As of June 10, 2015, the common stock of NANI was quoted on OTC Link operated by OTC Markets Group, Inc. (formerly "Pink Sheets") had nine market makers and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

2. As discussed in more detail above, the Respondent is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic

[1] The short form of the issuer's name is also its ticker symbol.

reports and failed to bring its filings current in response to the delinquency letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

3. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports.

4. As a result of the foregoing, the Respondent failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondent identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that the Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If the Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon the Respondent personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75185 / June 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16597

In the Matter of **Enterologics, Inc.,** **Midas Medici Group Holdings, Inc., and** **SEFE, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS[1]

1. Enterologics, Inc. ("ELGO") (CIK No. 1483731) is a revoked Nevada corporation located in St. Paul, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ELGO is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2013, which reported a net loss of $394,938 for the prior nine months. As of June 10, 2015, the common shares of ELGO were quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had five market makers and were eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Midas Medici Group Holdings, Inc. ("MMED") (CIK No. 1392448) is a void Delaware corporation located in New York, New York with a class of securities registered with

[1]The short form of each respondent's name is also its ticker symbol.

the Commission pursuant to Exchange Act Section 12(g). MMED is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a a consolidated net loss of $19,673,000 for the prior nine months. As of June 10, 2015, the common stock of MMED was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. SEFE, Inc. ("SEFE") (CIK No. 1321573) is a defaulted Nevada corporation located in Phoenix, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SEFE is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $1,230,144 for the prior nine months. As of June 10, 2015, the common stock of SEFE was quoted on OTC Link, had twelve market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

4. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

5. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

6. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75183 / June 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16596

In the Matter of	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934
Oraco Resources, Inc., SaviCorp (a/k/a SaVi Media Group, Inc.), Smoky Market Foods, Inc., Soltera Mining Corp., and Wolverine Holding Corp. (a/k/a Mobility Plus Medical Equipment, Inc.), Respondents.	

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS[1]

1. Oraco Resources, Inc. ("ORAC") (CIK No. 1490711) is a Nevada corporation located in Rochester, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ORAC is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $1,496,909 for the prior nine months. As of June 10, 2015, the common stock of ORAC was quoted on OTC Link operated by OTC

[1]The short form of each respondent's name is also its ticker symbol.

Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had nine market makers and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. SaviCorp (a/k/a SaVi Media Group, Inc.) ("SVMI") (CIK No. 1096637) is a Nevada corporation located in Santa Ana, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SVMI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2013, which reported a net loss of $6,961,318 for the prior year. SVMI also failed to file its Forms 10-Q for the periods ended March 31, June 30, and September 30, 2013, as required by Commission rules. As of June 10, 2015, the common stock of SVMI was quoted on OTC Link, had ten market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Smoky Market Foods, Inc. ("SMKY") (CIK No. 1370544) is a Nevada corporation located in Webster City, Iowa with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SMKY is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2014, which reported a net loss of $383,279 for the prior six months. SMKY also failed to file its Forms 10-Q for the periods ended March 31, June 30, and September 30, 2013, and its Form 10-K for the period ended December 31, 2012, as required by Commission rules. As of June 10, 2015, the common stock of SMKY was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Soltera Mining Corp. ("SLTA") (CIK No. 1348610) is a defaulted Nevada corporation located in Santa Ana, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SLTA is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended October 31, 2013, which reported a net loss of $503,079 for the prior year. SLTA failed to file its Forms 10-Q for the periods ended January 31, April 30, and July 31, 2013 and for the periods ended January 31, April 30, and July 31, 2014. SLTA also failed to file its Form 10-K for the period ended October 31, 2014. As of June 10, 2015, the common stock of SLTA was quoted on OTC Link, had eleven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Wolverine Holding Corp. (a/k/a Mobility Plus Medical Equipment, Inc.) ("WLVH") (CIK No. 18886) is a Delaware corporation located in Smyrna, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). WLVH is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $25,810 for the prior nine months. On May 24, 2012, WLVH filed a Form 10-K purporting to cover the periods ended December 31, 2009, 2010, and 2011. This filing failed to comply with Commission rules, which require timely and separate filings for each of these fiscal years. WLVH also failed to make any periodic filings for the periods ended September 30, 2005 through September 30, 2011, inclusive, and for the periods ended November 30, 1992 through February 28, 1999, inclusive. As of June 10, 2015, the common stock of WLVH was quoted on

OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75192; File No. 4-668)

June 17, 2015

Joint Industry Plan; Order Approving Amendment No. 1 to the National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail by BATS Exchange, Inc., BATS-Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

I. Introduction

On December 12, 2014, BATS Exchange, Inc., BATS-Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively, "SROs" or "Participants") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 608 thereunder,[2] an amendment ("Amendment No. 1") to the National Market System ("NMS") Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated

---

[1] 15 U.S.C. 78k-1.

[2] 17 CFR 242.608.

Audit Trail ("Selection Plan").[3] Amendment No. 1 was published for comment in the Federal Register on February 11, 2015.[4] The Commission received one comment letter[5] and the SROs submitted a response to that comment letter.[6] This order approves Amendment No. 1 to the Selection Plan.

II. Background and Description of the Proposal

A. Background

On July 11, 2012, the Commission adopted Rule 613 to require the SROs to jointly submit an NMS plan to create, implement, and maintain a consolidated audit trail ("CAT NMS Plan").[7] In response, the SROs engaged in a request for proposal ("RFP") process to help them develop an NMS Plan proposal and to solicit bids ("Bids") for the role of Plan Processor[8] to build, operate, administer, and maintain the consolidated audit trail.[9] The Selection Plan, which was approved by the Commission on February 21, 2014, sets forth the process by which the Participants will review, evaluate, and narrow down the Bids, and ultimately select the Plan

---

3 The Selection Plan is an NMS Plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. See Securities Exchange Act Release No. 71596 (Feb. 21, 2014), 79 FR 11152 (Feb. 27, 2014) ("Order Approving Selection Plan"); see also Securities Exchange Act Release No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013) ("Notice of Selection Plan").

4 See Securities Exchange Act Release No. 74223 (Feb. 6, 2015), 80 FR 7654 ("Notice of Amendment No. 1").

5 See letter to Brent J. Fields, Secretary, Commission, from Manisha Kimmel, Managing Director, Financial Information Forum ("FIF"), dated March 13, 2015 ("FIF Letter").

6 See letter to Brent J. Fields, Secretary, Commission, from the SROs, dated March 27, 2015 ("SRO Response Letter").

7 Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

8 Unless otherwise noted, capitalized terms are used as defined in Rule 613, in the Selection Plan, or in this Order.

9 See Notice of Amendment No. 1, supra note 4, at 7655.

Processor, following Commission approval of the CAT NMS Plan.[10] Currently, the Participants have narrowed the universe of Bids received to a set of six "Shortlisted Bidders." Under the Selection Plan, a Shortlisted Bidder is only eligible to revise its Bid following Commission approval of the CAT NMS Plan and approval of a majority of the Selection Committee.[11] Additionally, the Participants are not permitted to narrow the set of Shortlisted Bidders prior to approval of the CAT NMS Plan, but must proceed with selection of the CAT Plan Processor from among the Shortlisted Bidders in a two-round voting process.[12]

As described in more detail below, Amendment No. 1 would revise the Selection Plan to allow the SROs to accept revised Bids prior to Commission approval of the CAT NMS Plan and allow the SROs to narrow the list of Shortlisted Bids prior to Commission approval of the CAT NMS Plan. The SROs believe that providing the Shortlisted Bidders with an additional opportunity (or opportunities) to revise their Bids prior to the approval of the CAT NMS Plan is critical to the timely and considered selection of the CAT Plan Processor, and more importantly, the adherence to the other timelines for the CAT NMS Plan set forth in Rule 613(a).[13] The SROs state that since the time the Bidders submitted their Bids, the SROs have gathered and evaluated data and information from a variety of market participants, including Bidders, broker-dealers, vendors, regulators and others, and have made progress in developing an optimal solution and formalizing the solution in the proposed CAT NMS Plan and related technical documents.[14]

---

10 See Order Approving Selection Plan, supra note 3.

11 See id. at 11154. The Selection Committee is composed of one senior officer from each SRO and is charged with evaluating the Bids and selecting the Plan Processor. Id. at 11153.

12 See id. at 11154.

13 See Notice of Amendment No. 1, supra note 4, at 7655.

14 Id.

Given these developments, the SROs believe that Bidders should be permitted to revise their Bids using the new information provided in the proposed CAT NMS Plan and technical documents prior to approval of the CAT NMS Plan.[15] The SROs also state that given the passage of time since the Bids were submitted, Bidders have indicated that new technological and other beneficial solutions are now available that may further improve the Bids, and, ultimately, the proposed solutions.[16]

The SROs also explain that given the large amount of information they expect will be included in any revised Bids and the importance of appropriately analyzing such information, the SROs do not believe that two months will be sufficient to select the CAT Plan Processor from as many as six Shortlisted Bidders.[17] However, the SROs believe that if the existing Shortlisted Bidders were able to revise their Bids, including the option to reflect any new technology or other relevant developments, the SROs could further narrow the list of Shortlisted Bidders to better facilitate the ultimate selection of the CAT Plan Processor within the time limits imposed by Rule 613 in an appropriately thoughtful and deliberative manner.[18]

B. Description of the Proposal

The SROs propose to amend the Selection Plan to permit the Shortlisted Bidders to revise their Bids one or more times prior to Commission approval of the CAT NMS Plan if the Selection Committee determines, by majority vote, subject to the applicable recusal provisions, that such revisions are necessary and appropriate.[19] Amendment No. 1 would not affect Section

---

15 Id.

16 Id.

17 Id.

18 Id.

19 Id. at 7655, 57.

VI.(D) of the Selection Plan, which states that, following approval of the CAT NMS Plan by the Commission, Shortlisted Bidders for the role of Plan Processor may be permitted to revise their Bids only upon approval by a majority of the Selection Committee, subject to certain recusal provisions in the Selection Plan.[20]

In Amendment No. 1, the Participants also propose to provide the Selection Committee discretion to narrow the set of Shortlisted Bids prior to Commission approval of the CAT NMS Plan. Specifically, Amendment No. 1 would authorize an additional round of voting[21] to narrow the number of Shortlisted Bids, currently six, down to as few as three Bids. This round of voting, which could occur either before or after any revisions to Shortlisted Bids are accepted, would commence upon at least a two-thirds vote of the Selection Committee, and would proceed in a manner similar to the initial round of voting for determining the Shortlisted Bids.[22] Proposed Amendment No. 1 includes a recusal provision providing that no SRO shall vote in the process narrowing the set of Shortlisted Bidders if a Bid submitted by or including the SRO or an Affiliate of the SRO is a Shortlisted Bid.[23]

---

20 See Order Approving Selection Plan, supra note 3, at 11154.

21 This additional narrowing round would occur prior to the two-round voting process for selection of the CAT Plan Processor under Section VI.(E) of the Selection Plan. See id.

22 See Notice of Amendment No. 1, supra note 4, at 7655, 57. In voting to narrow the list of of Shortlisted Bids, the voting representative from each SRO would choose a first, second, and third choice of Shortlisted Bid, with each choice receiving a weight of, respectively, three points, two points, and one point. The three Bids receiving the highest cumulative number of points would constitute the new set of Shortlisted Bids. The Amendment also provides for a tie-breaking process, which could result in more than three Shortlisted Bids continuing in the process for selection of the CAT Plan Processor.

23 See id. The SROs have also submitted, and the Commission is currently considering, a second proposed amendment to the Selection Plan extending this recusal requirement to all selection voting rounds. See Securities Exchange Act Release No. 75193 (June 17, 2015).

III. Summary of Comment Letter and Response

As noted above, the Commission received one comment letter from FIF. FIF, on behalf of its Consolidated Audit Trail Working Group, supports Amendment No. 1 but offers two recommendations.[24] First, FIF recommends, in the interest of efficiency, that the Participants narrow the list of Bidders before any revision of Bids takes place. FIF believes that in view of the substantial efforts already undertaken by the Participants, there should be sufficient information for the Participants to take action and narrow the list of Bidders. FIF argues that it is unnecessary to require all six of the current Shortlisted Bidders to revise their Bids. Further, FIF argues that narrowing the list of Bidders prior to permitting the revision of Bids would reduce the amount of effort the SROs would need to expend in reviewing the revised Bids.

Second, FIF recommends that once the Participants further narrow the list of Shortlisted Bidders, each of the remaining Bidders should receive detailed information on Order Audit Trail System ("OATS"), electronic blue sheets ("EBS"), and Large Trader so that Bidders can consider all of the required functionality to retire these systems in preparing their revised Bids. FIF notes that the retirement of these systems is critical to managing the cost of CAT's implementation, and additional information concerning the functionality required to retire these systems would aid in revising Bids. FIF believes that understanding the precise functional requirements for retiring OATS is critical and imperative for a level playing field among Bidders.

The SROs considered FIF's recommendations, but declined to propose modifications to the Amendment.[25] With regard to FIF's suggestion that the SROs narrow the list of Bidders

24 See FIF Letter, supra note 5.

25 See SRO Response Letter, supra note 6, at 3.

before allowing any revisions to the Bids, the SROs state that one of the main purposes of the Amendment is to provide greater flexibility to the SROs to narrow the list of Bidders.[26] The SROs, however, note that they recognize the value of a streamlined process for all parties and intend to consider this factor, among others, in determining when to narrow the list of Shortlisted Bidders.[27]

The SROs concur with FIF in the significance of retiring overlapping and redundant systems, but do not see this as linked to the proposed amendment to the Selection Plan. The SROs reiterate their commitment to the retirement of systems as provided in the CAT NMS Plan,[28] noting that the Plan describes the major data attributes that will be required to retire such systems. Going forward, as additional technical specifications are developed in accordance with milestones included in the CAT NMS Plan, the SROs will provide this information to Bidders.

IV. Discussion

After careful review of Amendment No. 1, the comment received, and the SROs' response, the Commission finds that Amendment No. 1 is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to

---

26 Id. at 2.

27 Id.

28 Rule 613(a)(viii) requires "a plan to eliminate existing audit trail rules and systems (or components thereof) that will be rendered duplicative by the consolidated audit trail, including identification of such audit trail rules and systems (or components thereof); to the extent that any existing audit trail rules or systems provide information that is not rendered duplicative by the consolidated audit trail, an analysis of whether collection of such information continues to be appropriate and, if so, whether such information could instead be incorporated into the consolidated audit trail; the steps the plan sponsors propose to take to seek Commission approval for the elimination of such audit trail rules and systems (or components thereof); and a timetable for such elimination, including a description of how the plan sponsors propose to phase in the consolidated audit trail and phase out such existing audit trail rules and systems (or components thereof)[.]" 17 CFR 242.613(a)(viii).

remove impediments to, and perfect the mechanisms of, a national market system. The Commission believes Amendment No. 1 would provide the SROs with additional flexibility with respect to the process of reviewing Shortlisted Bids and selecting the CAT Plan Processor. Such additional flexibility is aimed at allowing the SROs to be more efficient in selecting the CAT Plan Processor, which is particularly important given additional deadlines contained in Rule 613(a)(3).[29] The Commission believes that the SROs' explanation that they prefer to retain flexibility in the process to select the Plan Processor, without any additional conditions or restrictions, in response to FIF's suggestion that they narrow the list of Bidders before allowing Bidders to revise their Bids, is reasonable. Permitting the SROs to accept revised Bids prior to Commission approval of the CAT NMS Plan, and to narrow the number of Shortlisted Bids prior to Commission approval of the CAT NMS Plan,[30] will allow the SROs to position themselves to avoid any delays in selecting the CAT Plan Processor,[31] thus removing any impediments to meeting the additional deadlines set forth in Rule 613(a)(3).[32]

Regarding FIF's recommendation that, prior to any Bid revisions, the SROs provide Bidders with detailed functional requirements concerning OATS, EBS, and Large Trader to facilitate retirement of those systems, the Commission notes that the SROs' Response Letter outlines the steps taken to date by the SROs to furnish pertinent information to assist in eliminating redundant systems and contains commitments to supplement that material in the future as outlined in the CAT NMS Plan.

---

29 17 CFR 242.613(a)(3).

30 See Notice of Amendment No. 1, supra note 4, at 7655, 57.

31 Rule 613(a)(3)(i) requires the Participants to select the CAT Plan Processor within two months after effectiveness of the CAT NMS Plan. 17 CFR 242.613(a)(3)(i).

32 See, e.g., Rule 613(a)(3)(iii), which requires Participants to begin providing data to the central repository within one year after effectiveness of the CAT NMS Plan.

IV. Conclusion

For the reasons discussed above, the Commission finds that Amendment No. 1 is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act,[33] and the rules thereunder, that Amendment No. 1 to the Selection Plan be, and it hereby is, approved.

By the Commission.

Brent J. Fields
Secretary

---

33 15 U.S.C. 78k-1.

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75193; File No. 4-668)

June 17, 2015

Joint Industry Plan; Notice of Filing of Amendment No. 2 to the National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail by BATS Exchange, Inc., BATS-Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

I. Introduction

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")[1] and Rule 608 Thereunder,[2] notice is hereby given that, on March 6, 2015, BATS Exchange, Inc., BATS-Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively, "SROs" or "Participants"), filed with the Securities and Exchange Commission (the "Commission") a proposal to amend the Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail (the "Selection Plan").

1 15 U.S.C. 78k-1.

2 17 CFR 242.608.

II. Background

On September 3, 2013, the SROs filed for approval the Selection Plan[3] to govern how the SROs would proceed with formulating and submitting a national market system ("NMS") plan to create, implement, and maintain a consolidated audit trail ("CAT NMS Plan").[4] The Selection Plan sets forth the process for the SROs to review, evaluate, and narrow down the Bids submitted in response to the SROs' request for proposals ("RFP") for a Plan Processor to build, operate, administer, and maintain the consolidated audit trail, and ultimately for the SROs to select the Plan Processor.[5] The Selection Plan was approved on February 21, 2014.[6]

The SROs now propose to amend the Selection Plan to require an SRO that is a Bidding Participant[7] to be recused from voting in any round by the Selection Committee to select the Plan Processor in which a Bid from or including such Bidding Participant or its Affiliate is being considered. A copy of the proposed amendment to the Selection Plan ("Amendment No. 2") is

---

3 See Securities Exchange Act Release No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013) (Notice of Selection Plan).

4 See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012) (Rule 613 Adopting Release).

5 See Notice of Selection Plan, supra note 3.

6 See Securities Exchange Act Release No. 71596 (Feb. 21, 2014), 79 FR 11152 (Feb. 27, 2014) (Selection Plan Approval Order). On December 12, 2014, the SROs filed a proposed amendment to the Selection Plan, which was published for notice and comment in the Federal Register on February 11, 2015, to allow the SROs to accept revised Bids prior to Commission approval of the CAT NMS Plan, and to narrow the list of Shortlisted Bidders prior to Commission approval of the CAT NMS Plan ("Amendment No. 1"). See Securities Exchange Act Release No. 74223 (Feb. 6, 2015), 80 FR 7654 (Feb. 11, 2015) (Notice of Amendment No. 1 to the Selection Plan). The Commission is separately issuing an approval order for Amendment No. 1 concurrently with this Notice. See Securities Exchange Act Release No. 75192 (June 17, 2015).

7 The Selection Plan defines "Bidding Participant" as a Participant that: (1) submits a Bid; (2) is an Affiliate of an entity that submits a Bid; or (3) is included, or is an Affiliate of an entity that is included, as a Material Subcontractor as part of a Bid. See Notice of Selection Plan, supra note 3, Exhibit A at 2. The Selection Plan defines "Participant" as a party to the Selection Plan (i.e., an SRO). See id., Exhibit A at 3.

attached as Exhibit A hereto. The Commission is publishing this notice to solicit comments from interested persons on proposed Amendment No. 2 to the Selection Plan.

III. Description of the Plan

Set forth in this Section III is the statement of the purpose of Amendment No. 2 to the Selection Plan, along with the information required by Rule 608(a)(4) and (5) under the Exchange Act,[8] prepared and submitted by the SROs to the Commission.[9]

A. Background

The Selection Plan, filed with the Commission on September 3, 2013,[10] and approved on February 21, 2014,[11] governs the process for Participant review and vote for Bids for the role of Plan Processor for the CAT NMS Plan.[12]

After gaining experience with the development process for the CAT NMS Plan, the Participants believe it is advisable to amend the Selection Plan to ensure that the Participants will be able to choose a Plan Processor without any potential conflict of interest raised by having a Participant vote in any round in the selection process where that Participant has submitted a Bid, a Bid has been submitted by an Affiliate of that Participant, or a Bid has been submitted that includes that Participant or its Affiliate, and any such Bid is under consideration in that round.

---

8 See 17 CFR 242.608(a)(4) and (a)(5).

9 See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated March 4, 2015.

10 See Notice of Selection Plan, supra note 3.

11 See Selection Plan Approval Order, supra note 6.

12 The Participants also have filed a proposed amendment to the Selection Plan (Amendment No. 1) that would allow the Participants to accept revised Bids prior to the Commission's approval of the CAT NMS Plan, and to narrow the list of Shortlisted Bidders prior to the Commission's approval of the CAT NMS Plan. See Notice of Amendment No. 1 to the Selection Plan, supra note 6. Amendment No. 1 also requires recusal of a Bidding Participant from voting in the narrowing process if a Bid submitted by or including the Participant or an Affiliate of the Participant is a Shortlisted Bid.

The Participants propose amending the Selection Plan to require recusal of that Bidding Participant in any of those situations.

1. <u>The Selection Plan Currently Requires Recusal on a Vote Only in the Second Round of the Selection Process</u>

Under the Selection Plan, a Bidding Participant is recused from a vote only in the second round of voting by the Selection Committee to select the Plan Processor (as set forth in Section VI(E)(4) of the Selection Plan) where that Participant has submitted a Bid, a Bid has been submitted by an Affiliate of that Participant, or a Bid has been submitted that includes that Participant or its Affiliate, and any such Bid is under consideration in that round.

2. <u>Requiring Recusal on a Vote in all Rounds of the Selection Will Ensure that all Participants Voting on the Plan Processor Do Not Have any Conflict of Interest</u>

As noted in the Selection Plan Approval Order, the Selection Plan as currently drafted balances the competing goals of ensuring all Participants participate meaningfully in the process of developing the CAT NMS Plan and mitigating potential conflicts of interest related to the involvement of Bidding Participants through information barriers and the voting limitations.[13] Based on their experience with these measures as currently set forth in the Plan, the Participants believe that the Plan has adequately addressed the potential conflicts of interest related to Bidding Participants. Nonetheless, the Participants believe that requiring recusal in all rounds of the selection process will further the Participants' goal of ensuring the fair and impartial consideration and selection of the Plan Processor.

[13] <u>See</u> Selection Plan Approval Order, <u>supra</u> note 6 at 11157.

B. Requirements Pursuant to Rule 608(a)

1. Description of the Amendments to the Selection Plan

The Participants propose amending the Selection Plan to prohibit a Bidding Participant from voting in any round to select the Plan Processor from among the Shortlisted Bidders where that Bidding Participant has submitted a Bid, a Bid has been submitted by an Affiliate of that Bidding Participant, or a Bid has been submitted that includes that Participant or its Affiliate, and any such Bid is under consideration in that round.

2. Governing or Constituent Documents

Not applicable.

3. Implementation of Amendment

The terms of the proposed amendment will be operative immediately upon approval of the amendment by the Commission.

4. Development and Implementation Phases

Not applicable.

5. Analysis of Impact on Competition

The proposed amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The SROs believe that the amendment further helps assure the fair and impartial consideration and selection of the Plan Processor for the CAT NMS Plan.

6. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan.

Not applicable.

7. Statement that the Amendments Have Been Approved by the Plan Sponsors

The Selection Plan provides that amendments to the Selection Plan shall be effected by means of a written amendment that: (1) sets forth the change, addition, or deletion; (2) is executed by over two-thirds of the Participants; and (3) is approved by the SEC pursuant to Rule 608, or otherwise becomes effective under Rule 608.[14]

The proposed amendment has been executed by all of the Participants, and has consequently been approved by the SROs.

8. Terms and Conditions of Access

Not applicable.

9. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

10. Method and Frequency of Processor Evaluation

Not applicable.

11. Dispute Resolution

Not applicable.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment No. 2 to the Selection Plan is consistent with the Act. Comments may be submitted by any of the following methods:

---

[14] 17 CFR 242.608.

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-668 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 4-668. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the Amendment to the Plan that are filed with the Commission, and all written communications relating to the Amendment to the Plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between 10:00 a.m. and 3:00 p.m. Copies of the submission will also be available for inspection and copying at the Participants' principal offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-668 and should be submitted on or before [insert date 30 days from publication in the Federal Register].

By the Commission.

Brent J. Fields
Secretary

Exhibit A

Proposed new language is italicized; proposed deletions are in [brackets].

PROPOSED AMENDMENT TEXT

Additions underlined; deletions bracketed[15]

Plan Processor Evaluation and Selection Plan

V. Selection Committee

***

(B) Voting

***

(3) No Bidding Participant shall vote in any [the second] round set forth [in Section VI(E)(4)] below if a Bid submitted by or including the Participant or an Affiliate of the Participant is a part of such [the second] round.

***

VI. RFP Bid Evaluation and Plan Processor Selection

***

(E) Selection of Plan Processor Under the CAT NMS Plan

***

(2) Each Participant shall have one vote in each round, except that no Bidding Participant shall be entitled to vote in any [the second] round if the Participant's Bid, a Bid submitted by an Affiliate of the Participant, or a Bid including the Participant or an Affiliate of the Participant is considered in such [the second] round. [Until the second round, Bidding Participants may vote for any Shortlisted Bid.]

(3) First Round Voting by the Selection Committee

---

15 The marked additions and deletions show the proposed changes to the current Selection Plan without taking into account Amendment No.1. The effect of the proposed additions and deletions on the Selection Plan, taking into account Amendment No. 1, would be renumbering Section V.(B)(3) as Section V.(B)(4).

(a) In the first round of voting, each Voting Senior Officer, <u>subject to the recusal provisions in Paragraph (E)(2) above</u>, shall select a first and second choice from among the Shortlisted Bids.

***

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9809 / June 17, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75187 / June 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16598

In the Matter of

SAND HILL EXCHANGE,
GERRIT HALL, and
ELAINE OU

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Sand Hill Exchange ("Sand Hill"), Gerrit Hall ("Hall") and Elaine Ou ("Ou") (collectively, "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 Cease-and-Desist Proceedings Pursuant To Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, And Imposing A Cease-And-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

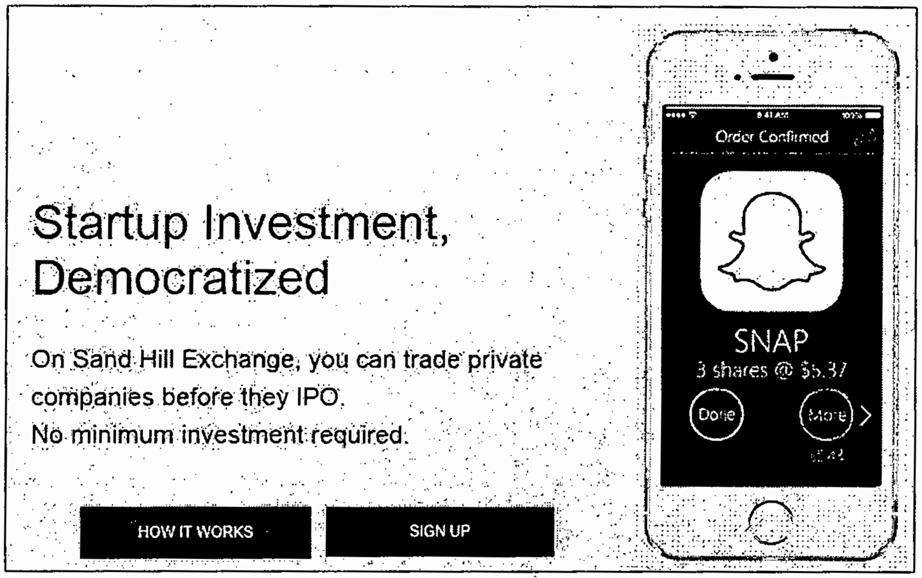
Summary

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") was enacted to address many of the abuses that contributed to the most-recent financial crisis, including certain abuses associated with the over-the-counter derivatives market, through the establishment of a comprehensive regulatory framework for swaps and security-based swaps. As a general matter, these products include any agreement, contract or transaction whose value is based upon – or "derivative" of – the occurrence of an event or the value of something else, e.g., interest rates, currencies, commodities, or securities.

Among other reforms, Dodd-Frank sought to regulate the sale of security-based swaps to persons who are not "eligible contract participants." For example, Dodd-Frank modified Section 5 of the Securities Act to make offers and sales of security-based swaps to such persons unlawful without a registration statement. This requirement was intended to ensure that persons who are not eligible contract participants receive financial and other significant information. In addition, Section 6 of the Exchange Act was amended to require that all transactions in security-based swaps involving persons who are not eligible contract participants be effected only on a national securities exchange. This requirement was enacted in order to help ensure that these types of transactions occur only on exchanges subject to the highest level of regulation in order to benefit those investors, particularly providing price discovery mechanisms, access to relevant trading information, and the ability to ensure that the trading activity is appropriately surveilled.

Beginning in mid-February 2015, two Silicon Valley entrepreneurs began offering and selling security-based swaps through a website, Sand Hill Exchange. They had begun Sand Hill in August 2014 and experimented with several business models. In mid-February 2015, they started to buy and sell agreements that were linked to liquidity events – such as mergers, initial public offerings, and dissolutions – and to the value of the companies and their securities.

Hall and Ou sought people to fund accounts at Sand Hill using dollars or bitcoins. They had a public web site, but primarily had success recruiting their friends and acquaintances. Investors bought and sold contracts linked to liquidity events and to the value of the companies and their securities. This is an image from the web site:



For about seven weeks, Sand Hill, Hall and Ou offered, bought and sold contracts through the web site in violation of the Dodd-Frank provisions that limit transactions in security-based swaps with persons who are not eligible contract participants. During that time, Hall and Ou exaggerated Sand Hill's trading, operations, controls, and financial backing. Sand Hill, Hall and Ou ceased offering and selling security-based swaps in the face of inquiries from the Commission staff on or about April 8, 2015.

Respondents

Sand Hill Exchange is an unincorporated business based in San Mateo, California. Sand Hill sought to attract users through a Web site at www.sandhill.exchange. Sand Hill and its web site were controlled at all times by Hall and Ou.

Gerrit Hall, age 33, is a resident of San Mateo, California. Hall has an MBA from the Sloan School of Management at the Massachusetts Institute of Technology. He and Ou ran Sand Hill jointly.

Elaine Ou, age 33, is a resident of San Mateo, California. Ou has a master degree from Harvard University and a PhD in electrical engineering from Stanford University where she created models for counter-party risk in credit default swap pricing. She and Hall ran Sand Hill jointly.

Facts

A. Sand Hill Began As A Silicon Valley Cousin To Fantasy Sports

1. Hall and Ou started Sand Hill in about August 2014. They wanted to create a business that would involve valuing private start-up companies, especially companies operating in Silicon Valley. Over the next seven months, Hall and Ou experimented with several business models.

2. From about September to December 2014, Hall and Ou ran Sand Hill as a variation of a "fantasy sports" league. Users were given a pool of credits issued by Sand Hill and could buy or sell the stock of private companies listed by Sand Hill. Hall and Ou created an algorithm to produce daily prices for the companies' stock. Although the users' trades were one input for the algorithm, the price displayed by Sand Hill was not the actual price at which users were buying or selling "fantasy" stock. Users competed to create a portfolio of companies with the most value at the end of a time period.

3. In January 2015, Sand Hill was accepted into an "accelerator" program run by certain Silicon Valley venture capitalists. Hall and Ou worked from the accelerator's office and met with venture capitalists and possible investors to discuss Sand Hill.

4. In January 2015, Hall and Ou changed Sand Hill's business model. Instead of "fantasy" investing, they turned Sand Hill into a valuation contest. They asked users to provide their own valuations of about 50 private companies. Using that data, Sand Hill created consensus valuations of those companies.

5. In mid-January 2015, Hall and Ou changed Sand Hill's business model again. This time, they turned Sand Hill into a game. They used their consensus valuations as a starting price for the companies' value. They invited users to bet if the prices would rise or fall. Few users participated. In early February 2015, Hall and Ou shut down the game.

6. Throughout the September 2014 to early February 2015 period, users on Sand Hall had been placing "fantasy" bets using credits issued by Sand Hill. Around February 10, 2015, Hall and Ou deleted the credit from users' accounts. They had decided to re-boot Sand Hill again, this time inviting users to buy and sell contracts using real money.

B. Sand Hill Offered Contracts That Reference Private Companies And Their Value

7. Starting about February 12, 2015, Sand Hill offered its new products with a web site that described the re-booted business. Hall and Ou viewed this as a "beta" test of the new business model. In that new model, users funded their Sand Hill accounts with either dollars or bitcoins and then bought and sold contracts that would allow them to profit (or suffer losses) in the future.

8. On February 13, 2015, Hall sent an email to users announcing the new product:

> We privately launched our new market to paying traders yesterday. If you ever wanted to profit off an early stage startup, now's your chance. Here's how it works:
> We list great startups, from seed stage to pre-IPO
> You can buy/sell smart contracts on the expected value of the company at liquidation
> You can close your position at any time, or hold on until the company exits.

9. Sand Hill's web site represented that it was "a market for smart contracts on the future valuation of startups."

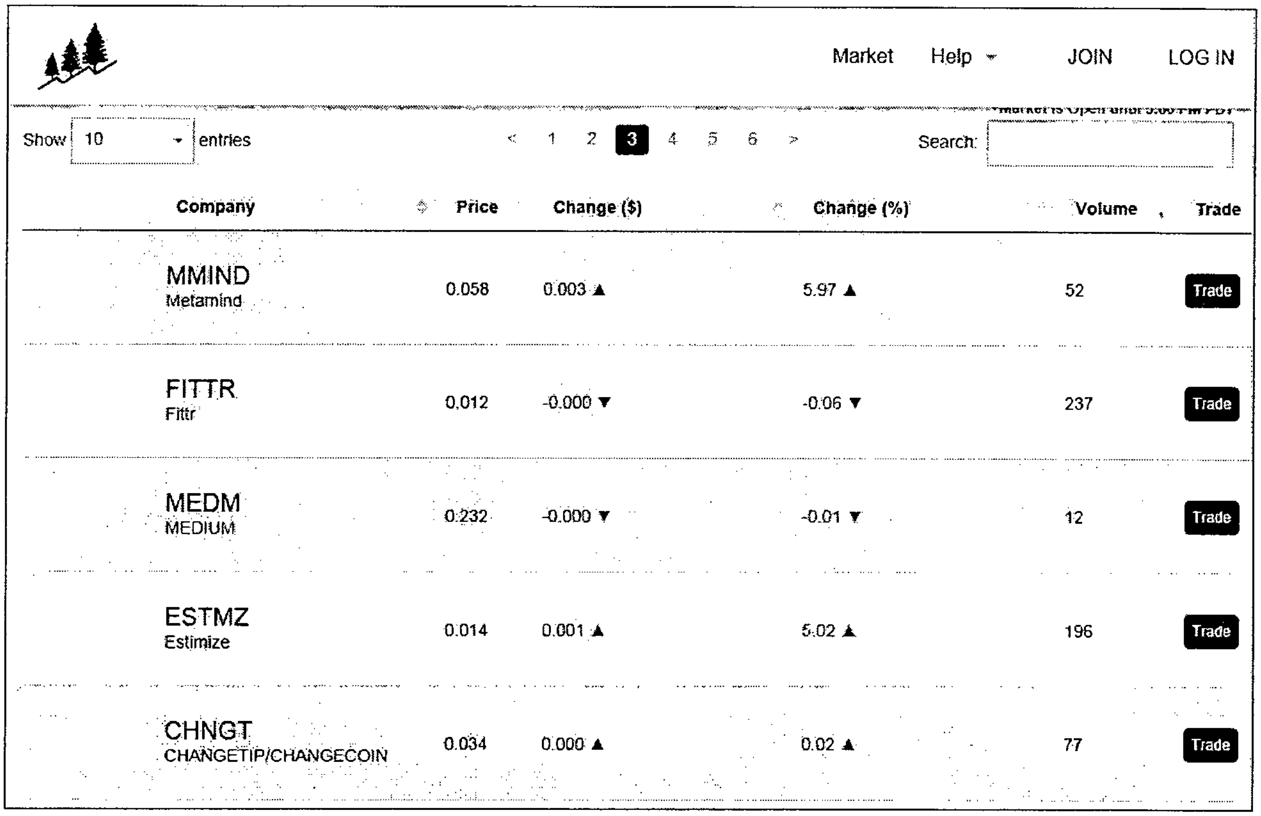
10. The private companies listed on Sand Hill included Uber, Pinterest, Snapchat and Coinbase. Those companies have issued securities, including stock, although those securities are not publicly-traded.

11. Sand Hill's web site described the contracts that users could buy or sell. According to the description, a user could buy a contract that referenced a private company. If that company experienced a liquidity event – such as an initial public offering, merger or dissolution – then the contract buyer would at such time receive one dollar for every $1 billion that the company was valued at the liquidity event, as determined by Sand Hill.

12. A February 25, 2015 blog entry on Sand Hill's web site described the contracts:

> Q: How are your contracts structured?
> Every contract expires when a company exits and the seller pays the buyer $1 for every $1 billion in valuation. In other words, if you bought ACME for $8 and at IPO it's valued at $10B, you would net $2.

13. Sand Hill's web site displayed the companies on whom contracts could be referenced with a price that appeared to be the most-recent transaction. Below is an image from Sand Hill's Web site:


Market Help JOIN LOG IN

Show 10 entries < 1 2 3 4 5 6 > Search:

Company	Price	Change ($)	Change (%)	Volume	Trade
MMIND Metamind	0.058	0.003 ▲	5.97 ▲	52	Trade
FITTR Fittr	0.012	-0.000 ▼	-0.06 ▼	237	Trade
MEDM MEDIUM	0.232	-0.000 ▼	-0.01 ▼	12	Trade
ESTMZ Estimize	0.014	0.001 ▲	5.02 ▲	196	Trade
CHNGT CHANGETIP/CHANGECOIN	0.034	0.000 ▲	0.02 ▲	77	Trade

14. Sand Hill sought out people to fund accounts. Hall and Ou did not ask users about their financial holdings or seek to limit Sand Hill to users with any specific amount of assets. On the Sand Hill web site, they wrote "We accept everybody regardless of accreditation status."

15. Hall and Ou intended to pay users who profited from their contracts. Hall viewed himself as personally liable for what he considered "boot-strapping" costs of starting a business, and Hall and Ou attempted to limit Sand Hill's scope by limiting the number of users and limiting most users to $250. However, Hall and Ou exaggerated Sand Hill's accomplishments in an attempt to improve people's views of them and the company.

16. These exaggerations included the Sand Hill web site descriptions that:

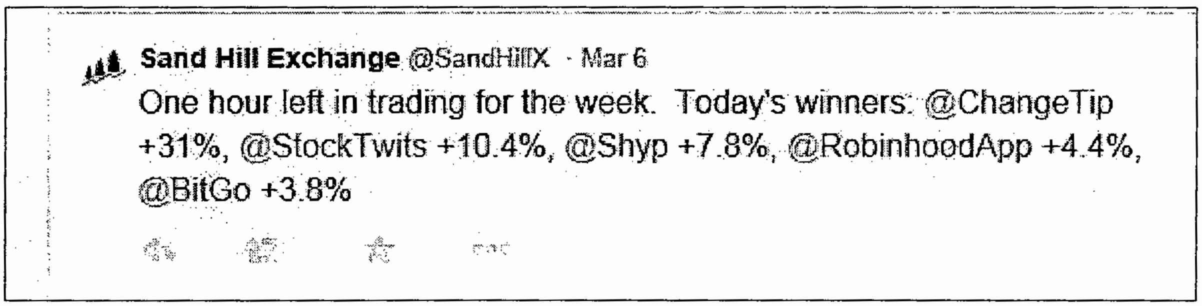
- Sand Hill was matching buyers and sellers through a "continuous double auction market";
- the prices and volume displayed on the Sand Hill web site reflected purchases and sales by users;
- Sand Hill had "auditing and insurance solutions, to ensure the safety of client accounts"; and

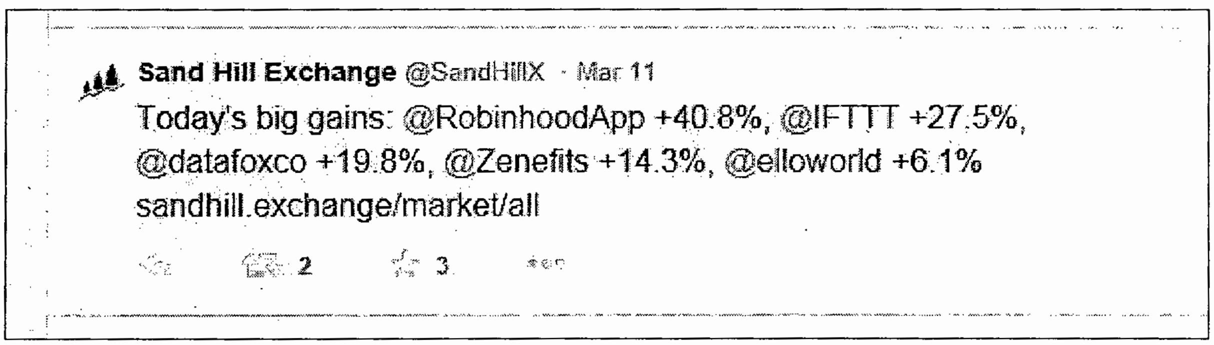
- Sand Hill was "backed by notable Silicon Valley investors, providing sufficient capital to guarantee deposits."

17. None of the descriptions in the prior paragraph were true. In reality, Sand Hill never had legal terms to govern the contract. All of the contracts entered on the Sand Hill web site were between the user and Sand Hill. There were almost no "short" investors to match with "long" investors. Sand Hill had no outside investors, auditors, or insurance. Instead, Sand Hill intended to rely on Hall and Ou to personally pay users who wanted to close out of a contract by reselling it or whose contract paid off based on a liquidity event.

18. In addition, the prices on the Sand Hill web site – which were often repeated in emails and Twitter posts sent by Hall – did not accurately reflect purchase and sales by users. Instead, Hall and Ou used an algorithm to set the price. At times, they manually changed the price to a value that they preferred. Similarly, the reports of volume on the Sand Hill web site did not reflect actual transactions. Hall and Ou set inflated volume amounts to make it appear that there was a liquid market for Sand Hill's contracts.

19. Below are images of Twitter posts touting supposed trading on Sand Hill:


Sand Hill Exchange @SandHillX · Mar 6
One hour left in trading for the week. Today's winners: @ChangeTip +31%, @StockTwits +10.4%, @Shyp +7.8%, @RobinhoodApp +4.4%, @BitGo +3.8%


Sand Hill Exchange @SandHillX · Mar 11
Today's big gains: @RobinhoodApp +40.8%, @IFTTT +27.5%, @datafoxco +19.8%, @Zenefits +14.3%, @elloworld +6.1%
sandhill.exchange/market/all
2 3

20. Hall and Ou understood that they were buying and selling derivatives linked to the value of private companies. They set a goal with one of the venture capitalists who ran the "accelerator" program to attract 1,000 trades per week.

21. Ou wrote that they were in the process of seeking regulatory approval for Sand Hill's contracts. That was not true. They had spoken with an attorney about regulatory issues, but had not begun any regulatory approval process. Hall and Ou also told people that Sand Hill's

contracts were "smart contracts" or were created "on the blockchain" – the bitcoin database that records all transactions on the network. That was also not true.

C. Sand Hill Sold Security-Backed Swaps

22. About 83 individuals bought and sold contracts referencing about 60 private companies on Sand Hill.

23. Some users funded their accounts using dollars, often paying with a credit card through a third-party payment processor that transferred the money to a bank account used by Hall and Ou. Some users funded their accounts using bitcoins to bitcoin accounts controlled by Ou. Overall, users provided Sand Hill with about $5,400 in dollars and bitcoins.

24. Sand Hill bought or sold contracts about 2,300 times. Some of those involved a user buying a contract and then closing the position by selling the same contract. In aggregate, the transactions had a value of about $10,000.

25. On March 10, 2015, a Financial Times reporter wrote about Sand Hill on a blog run by the newspaper. Hall and Ou expected the article to cause people to visit Sand Hill's web site. Accordingly, they created prices and volumes on the web site that day to make Sand Hill look like an active, liquid market.

26. On March 12, 2015, Sand Hill, Hall and Ou received their first inquiry from the Commission's staff.

27. Sand Hill, Hall and Ou only accepted money from five new users after the attention from the Financial Times and the inquiry from the SEC. That limited the scope of their violations.

28. Sand Hill, Hall and Ou stopped offering, selling or buying contracts on or about April 8, 2015. Sand Hill has refunded all deposits to users.

Legal Analysis

29. Dodd-Frank established a comprehensive regulatory regime for security-based swaps that includes amendments to the Securities Act and the Exchange Act to limit the sale of security-based swaps, particularly as it relates to individuals who are not eligible contract participants.

30. A security-based swap includes any agreement, contract or transaction that is a swap as defined in Commodity Exchange Act Section 1a[1] and is based on either (1) an index that is

[1] "[T]he term 'swap' [includes] any agreement, contract, or transaction—

> … (ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the

a narrow-based security-index, including any interest therein or on any value thereof, (2) a single security or loan, including any interest therein or on the value thereof, or (3) the occurrence, nonoccurrence, or extent of an occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer. See 15 U.S.C. § 78c(a)(68) (Exchange Act Section 3(a)(68)).

31. The Sand Hill contracts were security-based swaps because their payouts were linked to the valuation of private companies at a liquidity event, namely a merger, IPO or dissolution. As such, the value of the contracts were based on the value of stock issued by those private companies and/or based on the occurrence of an event that directly affects the financial statements, financial condition, or financial obligations of the private companies.

32. The regulatory regime established by Dodd-Frank contains a number of provisions applicable to transactions in security-based swaps that involve persons who are not eligible contract participants. The full definition of "eligible contract participant" contains different monetary thresholds that vary depending on the particular type of person or entity involved. For example, individuals need at least $5 million and often $10 million invested on a discretionary basis to qualify as eligible contract participants. See 7 U.S.C. § 1a(18) (definition).

33. Dodd-Frank added Section 5(e) of the Securities Act, which makes it unlawful for any person to offer to sell, offer to buy, or purchase or sell a security-based swap to any person who is not an eligible contract participant without an effective registration statement. See 15 U.S.C. § 77e(e).

34. Dodd-Frank added Section 6(l) of the Exchange Act, which makes it unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange. See 15 U.S.C. § 78f(l).

35. Many Sand Hill users who bought and sold the Sand Hill contracts were not eligible contract participants. Hall and Ou made no effort to limit transactions to people with any specific amount of assets, and they advertised that anyone could trade – even people who did not meet the lower standard of being an accredited investor.

36. By virtue of the foregoing, Sand Hill, Hall and Ou violated Section 5(e) of the Securities Act and Section 6(l) of the Exchange Act because no registration statements were in effect and the contracts were not sold on a national securities exchange.

---

occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence[.]"

7 U.S.C. § 1a(47) (Commodity Exchange Act section incorporated into the securities laws).

Undertakings

Respondents have undertaken to maintain on the front page of the Sand Hill web site for at least 90 days from the date of this order the existing statements that: 1) Sand Hill no longer offers "smart contracts" or any transactions based on actual money and 2) Sand Hill has refunded all money provided by users so any user who has not received a full refund should email Sand Hill at hello@sandhill.exchange.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondents Sand Hill, Hall, and Ou cease and desist from committing or causing any violations and any future violations of Section 5(e) of the Securities Act and of Section 6(l) of the Exchange Act.

B. Respondent Sand Hill shall pay a civil money penalty in the amount of $20,000 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). The initial $12,000 must be paid within five days of the entry of this Order. The remaining $8,000 must be paid by August 21, 2015. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. 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 Sand Hill 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 Michael Osnato, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

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

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4120 / June 17, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3664 / June 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16600

In the Matter of **GEORGE JOSEPH PALATHINKAL, CPA** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against George Joseph Palathinkal ("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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Sections III.2 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Palathinkal, 53 years old, is a citizen of Singapore. Palathinkal was, from March 1, 2013 through approximately June 1, 2014, a General Partner, Chief Financial Officer, and Chief Compliance Officer of Aphelion Fund Management, LLC ("Aphelion"), an unregistered investment adviser.

2. On March 13, 2015, Palathinkal pled guilty to one count of perjury in violation of Title 18 United States Code, Section 1621 before the United States District Court for the District of Columbia, in *United States v. George Palathinkal*, Crim. Information No. 1:15-cr-00024-RMC.

3. The criminal information to which Palathinkal pled guilty alleged that in March 2014, he took an oath that he would testify truthfully in investigative testimony before the Commission, and that during such testimony, he gave false testimony that earlier versions or drafts of a certain promissory note between Palathinkal and Aphelion existed, when in fact there were no earlier versions or drafts. In May 2014, the Commission filed a lawsuit against Palathinkal and others. In July and August 2014, Palathinkal voluntarily met with Commission attorneys and acknowledged the false testimony he had previously provided.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent Palathinkal 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.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75198 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16601

In the Matter of **GSP-2, Inc.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT [1]

1. GSP-2, Inc. ("GSPO") (CIK No. 1497644) is a revoked Nevada corporation located in Gongzhuling City, Jilin Province, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GSPO is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2013, which reported a net loss of $1,490,354 for the prior nine months. As of June 10, 2015, the common stock of GSPO was quoted on OTC Link operated by OTC Markets Group, Inc. (formerly "Pink Sheets") had one market makers and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

2. As discussed in more detail above, the Respondent is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic

[1] The short form of the issuer's name is also its ticker symbol.

reports and failed to bring its filings current in response to the delinquency letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

3. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports.

4. As a result of the foregoing, the Respondent failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondent identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that the Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If the Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon the Respondent personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75200 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16602

In the Matter of **China Organic Fertilizer, Inc.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT [1]

1. China Organic Fertilizer, Inc. ("CHOR") (CIK No. 1081944) is a revoked Nevada corporation located in Beijing, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CHOR is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of $2,478,369 for the prior year. As of June 10, 2015, the common stock of CHOR was quoted on OTC Link operated by OTC Markets Group, Inc. (formerly "Pink Sheets") had five market makers and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

2. As discussed in more detail above, the Respondent is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic

[1] The short form of the issuer's name is also its ticker symbol.

reports and failed to bring its filings current in response to the delinquency letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

3. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports.

4. As a result of the foregoing, the Respondent failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondent identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that the Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If the Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon the Respondent personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75202 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16603

In the Matter of **KPNQwest N.V. and Preventia, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents KPNQwest N.V. and Preventia, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. KPNQwest N.V. (CIK No. 1097566) is a Netherlands corporation located in Hoofddorp, The Netherlands with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). KPNQwest is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended December 31, 2000, which reported a net loss of 138,639,000 euros for the prior twelve months. As of May 29, 2015, the company's stock (symbol "KQIPQ") was quoted on OTC Link (previously 'Pink Sheets') operated by OTC Markets Group Inc. ('OTC Link'), had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Preventia, Inc. (CIK No. 1506302) is a defaulted Nevada corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission

pursuant to Exchange Act Section 12(g). Preventia is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $380,773 for the prior nine months. As of May 29, 2015, the company's stock (symbol "PVTA") was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

3. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

4. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

5. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75204 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16604

In the Matter of **BioCoral, Inc.,** **GC China Turbine Corp.,** **Race World International, Inc., and** **Worldwide Biotech & Pharmaceutical Co.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents BioCoral, Inc., GC China Turbine Corp., Race World International, Inc., and Worldwide Biotech & Pharmaceutical Co.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. BioCoral, Inc. (CIK No. 919605) is a Delaware corporation located in La Garenne-Colombes, France with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BioCoral is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $1,205,902 for the prior nine months. As of June 9, 2015, the company's stock (symbol "BCRA") was quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link"), had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

49 of 120

2. GC China Turbine Corp. (CIK No. 1380528) is a revoked Nevada corporation located in Wuhan, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GC China Turbine is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2011, which reported a net loss of $10,130,256 for the prior nine months. As of June 9, 2015, the company's stock (symbol "GCHT") was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Race World International, Inc. (CIK No. 1415736) is a revoked Nevada corporation located in Weifang, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Race World International is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2011, which reported a net loss of $7,694 for the prior six months. As of June 9, 2015, the company's stock (symbol "RCWR") was quoted on OTC Link, had two market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Worldwide Biotech & Pharmaceutical Co. (CIK No. 95302) is a forfeited Delaware corporation located in Xi'an, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Worldwide Biotech & Pharmaceutical is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of $298,902 for the prior three months. As of June 9, 2015, the company's stock (symbol "WWBP") was quoted on OTC Link, had two market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9811 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75205 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605

In the Matter of **The Baker Group, LP,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against The Baker Group, LP ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent is an Oklahoma limited partnership with its principal office in Oklahoma City, Oklahoma. Respondent is registered with the Commission as a broker-dealer and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2014 competitive securities offering in which an issuer failed to disclose that it filed four annual financial reports between 145 and 374 days late, in connection with four prior offerings, and failed to file required notices of late filings for each of those. Respondent also acted as underwriter in the prior offerings;

- A 2014 competitive securities offering in which an issuer failed to disclose that it had failed to file annual and financial operating data for one fiscal year that it had previously undertaken to make in connection with a prior offering and filed annual and financial operating data 85 days late for one fiscal year in connection with a second prior offering, and failed to file required notices of late filings for each of those. Respondent also acted as underwriter in the prior offerings; and

- Two 2013 competitive securities offerings in which an issuer failed to disclose that it had not made any filings it had previously undertaken to make in connection with a prior offering and had not filed notices of late filings. Respondent also acted as underwriter in the prior offering.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $250,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 The Baker Group, LP 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9812 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75206 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16606

In the Matter of **B.C. Ziegler and Company,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against B.C. Ziegler and Company ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Wisconsin and headquartered in Chicago, Illinois, is registered with the Commission as a broker-dealer and an investment adviser.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements or material omissions about prior compliance were the following:

- A 2013 negotiated securities offering in which an obligated group failed to disclose that it filed three annual financial reports between 143 and 508 days late, failed to file four years' worth of quarterly reports, and failed to file required notices of late filings for each of those;

- A 2013 negotiated securities offering in which an obligated group made no statement regarding its prior compliance and thereby failed to disclose that it filed five annual financial reports between 39 and 136 days late, filed two quarterly filings between 72 and 162 days late, and failed to file required notices of late filings for each of those; and

- A 2012 negotiated securities offering in which an obligor made no statement regarding its prior compliance and thereby failed to disclose that it failed to file an annual financial report, failed to file a required notice of late filing for that report, and filed three annual reports and thirteen quarterly reports without certain required information.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $250,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 B.C. Ziegler and Company 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9813 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75207 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16607

In the Matter of

Benchmark Securities, LLC,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Benchmark Securities, LLC ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, organized in Florida and headquartered in Winter Park, Florida is registered with the Commission as a broker-dealer.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements or material omissions about prior compliance were the following:

- A 2012 negotiated securities offering in which an issuer made no statement regarding its prior compliance and thereby failed to disclose that since 2009 it had not filed any annual financial reports it had previously undertaken to make, and had not filed notices of late filings for each of those;

- A 2012 negotiated securities offering in which an issuer failed to disclose that since 2010 it had not filed an annual financial report it had previously undertaken to make, and had not filed a notice of late filing; and

- A 2013 negotiated securities offering in which an issuer failed to disclose that it filed two audited financial statements between 71 and 95 days late, and failed to file required notices of late filings for each.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $100,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Benchmark Securities, LLC 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9814 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75208 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16608

In the Matter of **Bernardi Securities, Inc.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Bernardi Securities, Inc. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Illinois and headquartered in Chicago, Illinois, is registered with the Commission as a broker-dealer.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2011 negotiated securities offering in which an issuer failed to disclose that it filed an annual financial report 336 days late, and failed to file the required notice of late filing;

- A 2011 negotiated securities offering in which an issuer failed to disclose that it filed two annual financial reports 133 and 135 days late, and failed to file required notices of late filings for each of those; and

- A 2013 negotiated securities offering in which an issuer failed to disclose that it filed an annual financial report 306 days late, and failed to file the required notice of late filing.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in

---

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $100,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Bernardi Securities, Inc. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

---

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

---

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9815 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75209 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16609

In the Matter of **BMO Capital Markets GKST Inc.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against BMO Capital Markets GKST Inc. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Delaware and headquartered in Chicago, Illinois, is registered with the Commission as a broker-dealer.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2011 negotiated securities offering in which an issuer failed to disclose that it filed two annual financial reports between 158 and 522 days late, and failed to file required notices of late filings for each of those;

- A 2011 negotiated securities offering in which an issuer failed to disclose that it filed five annual financial reports between 335 and 1,517 days late, and failed to file required notices of late filings for each of those; and

- A 2011 negotiated securities offering in which an issuer failed to disclose that it filed four annual financial reports between 109 and 1,204 days late, and failed to file required notices of late filings for each of those. While some of the required annual financial information in the delinquent financial reports had been included in subsequent official statements, the issuer failed to provide within EMMA a cross-reference to those official statements.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $250,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 BMO Capital Markets GKST Inc. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9816/ June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75210 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16610

In the Matter of **BNY Mellon Capital Markets, LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMDIAL 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") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against BNY Mellon Capital Markets, LLC ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that:

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Delaware and headquartered in New York, New York, is registered with the Commission as a broker-dealer and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements or material omissions about prior compliance were the following:

- A 2012 negotiated securities offering in which an issuer failed to disclose that it had filed four annual financial reports which it had previously undertaken to make, that it had filed budgets for three fiscal years between 343 and 363 days late and had not filed a budget for one fiscal year, and failed to file required notices of late filings for each of those;

- A 2011 negotiated securities offering in which an issuer failed to disclose that it had filed three annual financial reports which it had previously undertaken to make between 77 and 92 days late, that it had not filed budgets and other financial information for four fiscal years, and failed to file required notices of late filings for each of those; and

- A 2010 negotiated securities offering (i) in which an issuer failed to disclose that it had filed four annual financial reports between 43 and 506 days late, had not filed budgets and other financial information during those four fiscal years, and failed to file required notices of late filings; and (ii) in which a guarantor failed to disclose that it had not filed four annual financial reports, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

---

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent

Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $120,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 BNY Mellon Capital Markets, LLC 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9817 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75211 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16611

In the Matter of **BOSC, INC.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against BOSC, Inc. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Oklahoma, and headquartered in Tulsa, Oklahoma, is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2013 competitive securities offering in which an issuer failed to disclose that it had not filed any annual financial reports that it had previously undertaken to make in connection with three prior offerings, and failed to file notices of late filings. Respondent also acted as underwriter in the prior offerings;

- A 2012 competitive securities offering in which an issuer failed to disclose that it was from 50 days to 211 days late in filing annual financial reports for three fiscal years that it had previously undertaken to make in connection with two prior offerings, and failed to file required notices of late filings. Respondent also acted as underwriter in the prior offerings; and

- A 2012 competitive securities offering in which an issuer failed to disclose that it had not filed any annual financial reports that it had previously undertaken to make in connection with three prior offerings, and failed to file required notices of late filings. Respondent also acted as underwriter in two of the three prior offerings.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is

---

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $250,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 BOSC, Inc. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9818 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75212 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16612

In the Matter of

Central States Capital Markets, LLC,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Central States Capital Markets, LLC, ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Kansas and headquartered in Prairie Village, Kansas, is registered with the Commission as a broker-dealer, municipal advisor, and an investment adviser.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance was the following:

- A 2011 negotiated securities offering in which an issuer failed to disclose that since 2009 it had not made any filings it had previously undertaken to make and had not filed notices of late filings for each of those..

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the

Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $60,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Central States Capital Markets, LLC 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9819 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75213 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16613

In the Matter of **CITIGROUP GLOBAL MARKETS INC.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Citigroup Global Markets Inc. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in New York and headquartered in New York, New York, is registered with the Commission as a broker-dealer and investment adviser.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- Five negotiated securities offerings between 2011 and 2013 in which the issuer failed to disclose that since 2009 it had not filed four annual financial reports and four audited financial statements it had previously undertaken to make, and failed to file required notices of late filings for each of those;

- A 2012 negotiated securities offering in which an issuer failed to disclose that it filed annual financial information over two-and-a-half years late, and failed to file the required notice of late filing for this; and

- 2010 and 2012 negotiated securities offerings in which the issuer failed to disclose that since 2008 it had not filed four audited annual financial statements it had previously undertaken to make, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission

staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $500,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Citigroup Global Markets Inc. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9820 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75214 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16614

In the Matter of

City Securities Corporation,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against City Securities Corporation ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Indiana and headquartered in Indianapolis, is registered with the Commission as a broker-dealer, municipal advisor, and an investment adviser.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2011 negotiated securities offering in which an obligor disclosed that it previously failed to consistently comply with prior undertakings and stated that the prior failures had been remedied, but failed to disclose that the purported remedial filings were made in 2011 on a former nationally recognized municipal securities information repository, not on EMMA as required; and

- A 2012 negotiated securities offering in which an issuer failed to disclose that it filed a financial report and operating data 45 days late, and failed to file a required notice of late filing.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $250,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 City Securities Corporation 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

---

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9821 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75215 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16615

In the Matter of **DAVENPORT & COMPANY LLC** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Davenport & Company LLC ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, formed in Virginia and headquartered in Richmond, Virginia, is a registered with the Commission as a broker-dealer and investment adviser.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2011 negotiated securities offering in which an issuer failed to disclose that it had not filed annual financial information for the prior year it had previously undertaken to make, and failed to file the required notice of late filing.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief

Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $80,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Davenport & Company 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

---

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9822 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75216 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16616

In the Matter of **DOUGHERTY & COMPANY LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Dougherty & Company LLC ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent is a Delaware limited liability company with its principal office located in Minneapolis, Minnesota. Respondent is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2013 negotiated securities offering in which an issuer failed to disclose that it had not made filings of annual financial reports for two years that it had previously undertaken to make, and failed to file required notices of late filings for each of those;

- A 2012 negotiated securities offering in which an issuer failed to disclose that it filed two annual financial reports between 87 and 119 days late, failed to include certain required information in those reports, and failed to file required notices of late filings for each of those reports; and

- A 2011 negotiated securities offering in which an issuer made no statement regarding its prior compliance and thereby failed to disclose that it had not filed two annual financial reports and filed another annual financial report 164 days late, and failed to file required notices of late filings for each of those reports.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $250,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Dougherty & Company LLC 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

---

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9823 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75217 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16617

In the Matter of FIRST NATIONAL CAPITAL MARKETS, INC., Respondent.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against First National Capital Markets, Inc. ("First National" 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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Nebraska and headquartered in Omaha, Nebraska, is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2012 negotiated securities offering in which an issuer failed to disclose that it had not filed three years of audited financial statements and operating data it had previously undertaken to make, and failed to file required notices of late filings for each of those; and

- A 2013 negotiated securities offering in which an issuer failed to disclose that since 2009 it had not made any filings it had previously undertaken to make, and had not filed notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

completeness of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years

prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient

to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $100,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 First National Capital Markets, Inc. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

<u>Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D</u>

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. <u>See</u> 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. <u>See</u> 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9824 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75218 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16618

In the Matter of **George K. Baum & Company,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against George K. Baum & Company ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Missouri and headquartered in Kansas City, Missouri, is registered with the Commission as a broker-dealer and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2012 negotiated securities offering in which an obligor failed to disclose that it had failed to file three annual reports it had previously undertaken to make, failed to file certain operating information for three years, and failed to file required notices of late filings for each of those;

- A 2013 negotiated securities offering in which an issuer made no statement regarding its prior compliance and thereby failed to disclose that it had filed two years' worth of certain required financial and operating information between 16 and 76 days late, failed to file other required financial information for the same two years, and failed to file required notices of late filings for each of those; and

- A 2013 negotiated securities offering in which an issuer failed to disclose that it had failed to file certain required financial and operating information for four fiscal years it had previously undertaken to make, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is

---

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $250,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 George K. Baum & Company 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9825 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75219 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16619

In the Matter of **GOLDMAN, SACHS & CO.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Goldman, Sachs & Co. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, a New York limited partnership, headquartered in New York, New York, is registered with the Commission as a broker-dealer, investment adviser and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements or material omissions about prior compliance were the following:

- A 2012 negotiated securities offering in which an obligated group made no statement regarding its prior compliance and thereby failed to disclose that it filed annual financial information and operating data more than three years late, and failed to file required notices of late filings for this;
- 2011 and 2012 negotiated securities offerings in which an issuer failed to disclose that it filed two annual financial reports between six to seven months late, and failed to file required notices of late filings for each of those; and
- A 2011 negotiated securities offering in which an issuer failed to disclose that it had not filed two years of annual financial information and operating data that it had previously undertaken to make, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission

staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $500,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Goldman, Sachs & Co. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9826 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75220 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16620

In the Matter of

Hutchinson, Shockey, Erley & Co.,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Hutchinson, Shockey, Erley & Co. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Illinois and headquartered in Chicago, Illinois, is registered with the Commission as a broker-dealer and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- 2013 and 2012 negotiated securities offerings in which an issuer failed to disclose that it failed to file an annual financial report and filed another annual financial report 53 days late, and failed to file required notices of late filings for each of those;

- 2013 and 2010 negotiated securities offerings in which an issuer failed to disclose that it filed an annual financial report 437 days late, and failed to file required notice of late filing for that report.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and

---

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

completeness of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years

prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient

to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $220,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Hutchinson, Shockey, Erley & Co. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9827 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75221 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16621

In the Matter of J.P. MORGAN SECURITIES LLC, Respondent.	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against J.P. Morgan Securities LLC ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, formed in Delaware and headquartered in New York, New York, is registered with the Commission as a broker-dealer and investment adviser.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements or material omissions about prior compliance were the following:

- A 2011 negotiated securities offering in which an obligor made no statement regarding its prior compliance and thereby failed to disclose that it filed an annual financial report 699 days late, and failed to file a required notice of late filing for that report;
- A 2011 negotiated securities offering in which an issuer failed to disclose that it had not filed an audited financial report, and failed to file a required notice of late filing for that report; and
- A 2011 negotiated securities offering in which an issuer failed to disclose that it filed an annual financial report 732 days late, and failed to file a required notice of late filing for that report.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $500,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 J.P. Morgan Securities LLC 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9828 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75222 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16622

In the Matter of L.J. HART & COMPANY, Respondent.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against L.J. Hart & Company ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Missouri and headquartered in St. Louis, Missouri, is a registered with the Commission as a broker-dealer and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2013 negotiated securities offering in which an obligor failed to disclose that it had not filed two annual financial reports it had previously undertaken to make, and had not filed required notices of late filings for each of those;
- A 2013 negotiated securities offering in which an issuer failed to disclose that it had not filed an annual financial report it had previously undertaken to make, and had not filed a required notice of late filing for that report; and
- A 2014 negotiated securities offering in which an issuer failed to disclose that it filed an annual financial report nine months late; and failed to file a required notice of late filing for that report.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $100,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 L.J. Hart & Company 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9829 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75223 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16623

In the Matter of **Loop Capital Markets LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Loop Capital Markets LLC ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. ____ / ________, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. ____ / ________, 2015

ADMINISTRATIVE PROCEEDING
File No. ______

In the Matter of **Loop Capital Markets LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Loop Capital Markets LLC ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Delaware and headquartered in Chicago, Illinois, is registered with the Commission as a broker-dealer.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2010 negotiated securities offering in which an issuer failed to disclose that it filed one annual financial report 45 days late and another annual financial report 393 days late, and failed to file required notices of late filings for each of those. The required annual financial information in the second delinquent financial report had been included in an Official Statement dated 44 days after the deadline, however the issuer failed to provide a cross-reference to that Official Statement for existing bondholders.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the

---

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the

Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $60,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Loop Capital Markets LLC 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9830 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75224 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16624

In the Matter of **MARTIN NELSON & CO., INC.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Martin Nelson & Co., Inc. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Washington, and headquartered in Seattle, Washington, is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2012 negotiated securities offering in which an issuer failed to disclose that it had not filed three complete annual financial reports, including one annual audited financial statement, which it had previously undertaken to make, and failed to file required notices of late filings for each of those;

- A 2012 negotiated securities offering in which an issuer failed to disclose that it had not filed an annual financial statement with required operating data, which it had previously undertaken to make, and failed to file a required notice of the late filing; and

- A 2011 negotiated securities offering in which an issuer failed to disclose that it had not filed two complete annual financial reports, including one annual audited financial statement, which it had previously undertaken to make, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $100,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Martin Nelson & Co., Inc. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative, Respondents.	ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

---

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9831 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75225 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16625

In the Matter of **Merchant Capital, L.L.C.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Merchant Capital, L.L.C. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, organized in Alabama and headquartered in Montgomery, Alabama, is registered with the Commission as a broker-dealer. Respondent filed a withdrawal for its municipal advisor registration with the Commission that became effective on May 25, 2015.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2011 negotiated securities offering in which an issuer failed to disclose that it filed two annual financial reports between 51 and 288 days late, and failed to file required notices of late filings for each of those; and

- A 2012 negotiated securities offering in which an issuer failed to disclose that since 2010 it had not filed an annual financial report it had previously undertaken to make, and had not filed a notice of late filing.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The

Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Provided however, that if Respondent files a Form BDW with the Commission on or before June 30, 2015 in connection with its December 31, 2014 acquisition by Stifel Financial Corp., it shall not be required to comply with the undertakings in paragraphs 14(a)-(d).

f. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

g. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $100,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Merchant Capital, L.L.C. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(e), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9833 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75227 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16626

In the Matter of MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED, Respondent.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Delaware and headquartered in New York, New York, is registered with the Commission as a broker-dealer and investment adviser.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2013 negotiated securities offering in which an issuer failed to disclose that it did not file one annual financial report, filed two other annual financial reports between four and five months late, and failed to file required notices of late filings for each of those. The two delinquent annual reports and an additional timely financial report were included in earlier Official Statements filed by the issuer, but the issuer failed to provide within EMMA cross-references to those Official Statements;

- 2011 and 2013 negotiated securities offerings in which an issuer failed to disclose that it filed two annual financial reports between six to seven months late, and failed to file required notices of late filings for each of those; and

- A 2010 negotiated offering and 2010 and 2012 competitive securities offerings in which an issuer failed to disclose that it had not filed an annual financial report it had previously undertaken to make, and had not filed a required notice of late filing for that report.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is

---

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission

staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $500,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Merrill Lynch, Pierce, Fenner & Smith, Incorporated 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

<u>Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D</u>

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. <u>See</u> 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. <u>See</u> 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

---

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9834 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75228 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16627

In the Matter of **MORGAN STANLEY & CO. LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Morgan Stanley & Co. LLC ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, formed in Delaware and headquartered in New York, New York, is registered with the Commission as a broker-dealer.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2011 competitive securities offering in which an issuer failed to disclose that it filed an annual financial report 191 days late, and failed to file a required notice of late filing for that report. Respondent also acted as underwriter in a prior securities offering by this issuer;

- A 2012 negotiated securities offering in which an obligor failed to disclose that it filed four quarterly reports between 36 and 99 days late, and failed to file required notices of late filings for each of those; and

- A 2013 negotiated securities offering in which an issuer failed to disclose that it filed two annual financial reports between six to seven months late, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission

staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $500,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Morgan Stanley & Co. LLC 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative, Respondents.	ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

---

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9835 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75229 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16628

In the Matter of **THE NORTHERN TRUST COMPANY,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15B(c) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15B(c) of the Securities Exchange Act of 1934 ("Exchange Act") against The Northern Trust Company ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15B(c) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered municipal securities dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Illinois and headquartered in Chicago, Illinois, is a registered with the Commission as a municipal securities dealer.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2010 negotiated securities offering in which an issuer made no statement regarding its prior compliance and thereby failed to disclose that it failed to file three annual financial reports it had previously undertaken to make, and had not filed required notices of late filings for each of those; and

- A 2010 negotiated securities offering in which an issuer made no statement regarding its prior compliance and thereby failed to disclose that since 2007 it had not filed any annual financial reports it had previously undertaken to make, and had not filed required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation

---

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15B(c) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $60,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 The Northern Trust Company 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9836 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75230 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16629

In the Matter of **Oppenheimer & Co. Inc.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMDIAL 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") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Oppenheimer & Co. Inc. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that:

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in New York and headquartered in New York, New York is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements or material omissions about prior compliance were the following:

- A 2013 negotiated securities offering in which an issuer made no statement regarding its prior compliance and thereby failed to disclose that it had not filed four annual financial reports it had previously undertaken to make and failed to file required notices of late filings for each of those.

- A 2014 negotiated securities offering in which an issuer failed to disclose that it had not filed five annual financial reports it had previously undertaken to make and failed to file required notices of late filings for each of those.

- A 2014 negotiated securities offering in which an issuer failed to disclose that it had not filed five annual financial reports it had previously undertaken to make and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission

staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $400,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Oppenheimer & Co. Inc. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

---

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9837 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75231 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16630

In the Matter of **Piper Jaffray & Co.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Piper Jaffray & Co. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Delaware and headquartered in Minneapolis, Minnesota, is registered with the Commission as a broker-dealer and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2013 negotiated securities offering in which an issuer failed to disclose that it had failed to file its annual financial reports for two years, and failed to file required notices of late filings for each of those;

- A 2013 negotiated securities offering in which an issuer failed to disclose that it had filed its audited financial statements for three years between 297 and 1027 days late, failed to file its audited financial statements for one year, and failed to file required notices of late filings for each of those; and

- A 2013 negotiated securities offering in which an issuer, just prior to the offering, filed three annual financial reports which were between 433 and 1163 days late, but represented in the offering that it was currently in compliance with its continuing disclosure obligations without disclosing the late reports, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $500,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Piper Jaffray & Co. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9838 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75232 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16631

In the Matter of **Raymond James & Associates, Inc.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Raymond James & Associates, Inc. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Florida and headquartered in St. Petersburg, is registered with the Commission as a broker-dealer, municipal advisor and investment adviser.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2013 competitive securities offering in which an issuer failed to disclose that it had not filed three annual financial reports that it had previously undertaken to make, and failed to file notices of late filings for each of those. Respondent acted as an underwriter in a prior securities offering by this issuer;

- A 2011 negotiated securities offering in which an issuer failed to disclose that it had not filed two annual financial reports it had previously undertaken to make, and had not filed notices of late filings for each of those; and

- A 2011 negotiated securities offering in which an issuer failed to disclose that it filed two annual financial reports between five and ten months late, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $500,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Raymond James & Associates, Inc. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9839 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75233 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16632

In the Matter of **RBC CAPITAL MARKETS, LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against RBC Capital Markets, LLC ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, organized under Minnesota law and headquartered in New York, New York, is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2012 negotiated securities offering in which an issuer failed to disclose that it filed four annual financial reports between 34 and 282 days late, and failed to file required notices of late filings for each of those;

- A 2012 negotiated securities offering in which an issuer failed to disclose that for two consecutive years it had not made any filings it had previously undertaken to make and had not filed notices of late filings for each of those; and

- A 2013 negotiated securities offering in which an issuer failed to disclose that in addition to untimely disclosure of audited financial statements, it had not filed for three consecutive years any operating data which it had previously undertaken to make and had not filed notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $500,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 RBC Capital Markets, LLC 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative, Respondents.	ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9840 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75234 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16633

In the Matter of

Robert W. Baird & Co. Incorporated,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") Robert W. Baird & Co. Incorporated ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Wisconsin and headquartered in Milwaukee, Wisconsin, is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2013 negotiated securities offering in which an issuer failed to disclose that it filed two annual financial reports between 280 and 345 days late, and failed to file required notices of late filings for each of those;

- A 2012 negotiated securities offering in which an issuer failed to disclose that it filed one of its annual financial reports 224 days late, and failed to file the required notice of late filing; and

- A 2010 negotiated securities offering in which an issuer failed to disclose that it filed five annual financial reports between 147 and 1,064 days late, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $500,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Robert W. Baird & Co. Incorporated 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9841 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75235 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16634

In the Matter of **Siebert Brandford Shank & Co., LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Siebert Brandford Shank & Co., LLC ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Delaware and headquartered in Oakland, California, is a registered with the Commission as a broker-dealer and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

> A 2010 negotiated securities offering in which an issuer failed to disclose that it filed three audited financial statements between 8 and 36 months late, failed entirely to file other required continuing disclosure information for two fiscal years, and failed to file required notices of late filings for each of those;
>
> A 2014 negotiated securities offering in which an issuer failed to disclose that it had not filed two annual financial reports it had previously undertaken to make and had not filed notices of late filings for each of those; and
>
> A 2013 negotiated securities offering in which an issuer failed to disclose that although it had filed audited financial statements for the previous five fiscal years, it had not filed other required continuing disclosure information, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure.. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $240,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Siebert Brandford Shank & Co., LLC 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9842 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75236 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16635

In the Matter of **SMITH HAYES FINANCIAL SERVICES CORPORATION,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Smith Hayes Financial Services Corporation ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Nebraska, and headquartered in Lincoln, Nebraska, is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- 2011 and 2013 negotiated securities offerings in which an issuer failed to disclose that since 2009 it had not filed any annual financial reports that it had previously undertaken to make, and failed to file required notices of late filings.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief

Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $40,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Smith Hayes Financial Services Corporation 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9843 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75237 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16636

In the Matter of Stephens Inc., Respondent.	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Stephens Inc. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Arkansas and headquartered in Little Rock, is registered with the Commission as a broker-dealer, municipal advisor, and investment adviser.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2013 negotiated securities offering in which an issuer failed to disclose that it filed two annual financial reports between five and thirty-five months late, failed to file an annual financial report it had previously undertaken to make, and failed to file required notices of late filings for each of those; and

- A 2013 negotiated securities offering in which an issuer failed to disclose that it filed two annual financial reports between seven and eight weeks late, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

completeness of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years

prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient

to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $400,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Stephens Inc. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9844 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75238 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16637

In the Matter of **Sterne, Agee & Leach, Inc.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Sterne, Agee & Leach, Inc. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Delaware and headquartered in Birmingham, Alabama, is registered with the Commission as a broker-dealer and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2014 and two 2013 negotiated securities offerings in which an issuer stated it was in compliance with existing continuing disclosure undertakings, but failed to disclose that it filed, shortly before the first of the three offerings, three annual financial reports that were between one and three years late, and failed to file required notices of late filings for each of those; and

- A 2013 negotiated securities offering in which an issuer failed to disclose that it had not filed an annual financial report it had previously undertaken to make, and failed to file a required notice of late filing for that report.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Provided, however, if on or before December 31, 2015, Respondent certifies in writing to the Commission staff that it no longer engages in the business of underwriting municipal securities as a result of its announced February 23, 2015 acquisition by Stifel Financial Corp., then it shall not be required to comply with the undertakings in paragraphs 14(a)-(d).

f. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

g. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $80,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Sterne, Agee & Leach, Inc. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(e), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9845 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75239 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16638

In the Matter of **Stifel, Nicolaus & Company, Inc.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Stifel, Nicolaus & Company, Inc. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Missouri and headquartered in St. Louis, Missouri, is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2012 negotiated securities offering in which an issuer failed to disclose that it had filed two years' worth of certain required financial information between 67 and 153 days late, and failed to file required notices of late filings for each of those;

- A 2012 negotiated securities offering in which an issuer failed to disclose that it had filed its audited financial statements for three years between 14 and 94 days late, failed to file its audited financial statement for one year, and failed to file required notices of late filings for each of those; and

- A 2012 negotiated securities offering in which an issuer failed to disclose that since 2009 it had not made any filings it had previously undertaken to make in connection with prior securities offerings, and had not filed notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $500,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Stifel, Nicolaus & Company, Inc. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9846 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75240 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16639

In the Matter of **WELLS NELSON & ASSOCIATES, LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Wells Nelson & Associates, LLC ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent is an Oklahoma limited liability company with its principal office in Oklahoma City, Oklahoma. Respondent is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB")

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- A 2013 negotiated securities offering in which an issuer failed to disclose that it failed to file two annual financial reports, filed an annual financial report 264 days late, and failed to file required notices of late filings for each of those;

- A 2013 negotiated securities offering in which an issuer failed to disclose that it failed to file an annual financial report and filed another annual financial report 487 days late, and failed to file required notices of late filings for each of those; and

- A 2012 negotiated securities offering in which an issuer made no statement regarding its prior compliance and thereby failed to disclose that it had not filed two annual financial reports it had previously undertaken to make, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication

from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $100,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Wells Nelson & Associates, LLC 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9847 / June 18, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75241 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16640

In the Matter of **WILLIAM BLAIR & COMPANY, L.L.C.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against William Blair & Company, L.L.C. ("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 it and the subject matter of these proceedings, which are admitted, 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 and Section 15(b) of the Securities Exchange Act of 1934, 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[1] that

Summary

1. This matter involves violations of an antifraud provision of the federal securities laws in connection with Respondent's underwriting of certain municipal securities offerings. Respondent, a registered broker-dealer, conducted inadequate due diligence in certain offerings and as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. This resulted in Respondent offering and selling municipal securities on the basis of materially misleading disclosure documents. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.[2]

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.[3] Accordingly, this Order and Respondent's Offer are based on the information self-reported by Respondent.

Respondent

3. Respondent, incorporated in Delaware and headquartered in Chicago, Illinois, is registered with the Commission as a broker-dealer, municipal advisor, and investment adviser.

Due Diligence Failures

4. Pursuant to Rule 15c2-12 of the Exchange Act, before purchasing or selling municipal securities in connection with an offering, underwriters are required to obtain executed continuing disclosure agreements from the issuers and/or obligated persons with respect to such municipal securities. In order to comply with the requirements of Rule 15c2-12, the continuing disclosure agreement must include an undertaking by the municipal issuer and/or obligated person, for the benefit of investors, to provide an annual report containing certain financial information and operating data to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system,[4] as well as timely notice of certain specified events

---

[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.

[2] A willful violation of the securities laws means merely "'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)).

[3] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

[4] Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate the MSRB's Electronic Municipal Market Access system as the central repository for ongoing disclosures by municipal issuers, effective July 1, 2009.

pertaining to the municipal securities being offered and timely notice of any failure to submit an annual report on or before the date specified in the continuing disclosure agreement.

5. Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings.

6. Respondent acted as either a senior or sole underwriter in a number of municipal securities offerings in which the official statements essentially represented that the issuer or obligated person had not failed to comply in all material respects with any previous continuing disclosure undertakings. In fact, certain of these statements were materially false and/or misleading because the issuer or obligated person had not complied in all material respects with its previous continuing disclosure undertakings. Among the offerings in which the official statements contained false or misleading statements about prior compliance were the following:

- Two negotiated securities offerings in 2012 in which an issuer failed to disclose that it filed four annual financial reports between 165 and 303 days late, and failed to file required notices of late filings for each of those; and

- A 2013 negotiated securities offering in which an issuer disclosed that it had failed to timely file an financial report, but failed to disclose that it also failed to file another annual financial report, and failed to file required notices of late filings for each of those.

7. Respondent failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the assertions by these issuers and/or obligors regarding their compliance with previous continuing disclosure undertakings pursuant to Rule 15c2-12.

Legal Discussion

8. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

9. An underwriter may violate the antifraud provisions of the federal securities laws if it does not have a reasonable basis for believing the truthfulness of material statements in offering documents in connection with a securities offering, as a result of inadequate due diligence. "By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and *completeness* of the key representations made in any disclosure documents used in the offerings." Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (emphasis

added) (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 28, 1988) ("1988 Proposing Release")); see also City Securities Corp., Exchange Act Release No. 70056, 2013 WL 3874855, at *1-2 (July 29, 2013) (finding underwriter violated anti-fraud provisions by failing to conduct due diligence related to issuer's statements regarding its compliance with previous continuing disclosure undertakings).

10. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. See Dolphin & Bradbury, 512 F.3d at 641 (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787). While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. Id. (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787 n.74).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i) (2015); see also Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994). Critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. See id. at 59594. The disclosure requirements of Rule 15c2-12 provide an incentive for issuers and obligated persons to comply with their undertakings, allowing underwriters, investors, and others to assess the reliability of the disclosure representations. See Municipal Securities Disclosure, 59 Fed. Reg. at 59595.

12. As a result of the conduct described herein, Respondent willfully violated Section 17(a)(2) of the Securities Act.

Cooperation

13. In determining to accept Respondent's offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

Undertakings

14. Respondent has undertaken to:

a. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of Respondent's policies and procedures as they relate to municipal securities underwriting due diligence. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the

Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 14(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

e. Respondent shall cooperate with any subsequent investigation by the Division regarding the subject matter of this Order, including the roles of other parties.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $80,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 William Blair & Company, L.L.C. 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 LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 14(a)-(d), above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of

Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,

Respondents.

ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9848 / June 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16605; 3-16606; 3-16607; 3-16608; 3-16609; 3-16610; 3-16611; 3-16612; 3-16613; 3-16614; 3-16615; 3-16616; 3-16617; 3-16618; 3-16619; 3-16620; 3-16621; 3-16622; 3-16623; 3-16624; 3-16625; 3-16626; 3-16627; 3-16628; 3-16629; 3-16630; 3-16631; 3-16632; 3-16633; 3-16634; 3-16635; 3-16636; 3-16637; 3-16638; 3-16639 and 3-16640

In the Matter of **Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative,** **Respondents.**	**ORDER UNDER RULES 262, 405, 505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF THE SECURITIES ACT OF 1933 GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF RULES 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), AND 602(c)(3) OF THE SECURITIES ACT OF 1933, AND GRANTING WAIVERS FROM BEING INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the "Division") announced the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.[1]

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission ("Commission") accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing

[1] See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml (last modified Nov. 13, 2014).

disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders ("MCDC Orders") instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the "MCDC Underwriters").[2] These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant's recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries ("MCDC Issuers").

III.

Waiver of Disqualification Under Regulation A and Rule 505 and 506 of Regulation D

The Securities Act exemptions from registration found in Regulation A and Rule 505 of Regulation D are not available for an issuer's offer and sale of securities if any director, officer, or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to, among other provisions, Section 15(b) of the Exchange Act. See 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii).

Rule 506(d) of Regulation D provides for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity's activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.506(d)(1)(iv)(B).

[2] The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . ." See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the

definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262, 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(b)(3), 505(b)(2)(iii), 506(d)(1)(iv), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

The Baker Group, LP
B.C. Ziegler and Company
Benchmark Securities, LLC
Bernardi Securities, Inc.
BMO Capital Markets GKST Inc.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Central States Capital Markets, LLC
Citigroup Global Markets Inc.
City Securities Corporation
Davenport & Company LLC
Dougherty & Co. LLC
First National Capital Markets, Inc.
George K. Baum & Company
Goldman, Sachs & Co.
Hutchinson, Shockey, Erley & Co.
J.P. Morgan Securities LLC
L.J. Hart and Company
Loop Capital Markets, LLC
Martin Nelson & Co., Inc.
Merchant Capital, L.L.C.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. LLC
The Northern Trust Company
Oppenheimer & Co. Inc.
Piper Jaffray & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
Robert W. Baird & Co. Incorporated
Siebert Brandford Shank & Co., LLC
Smith Hayes Financial Services Corporation
Stephens Inc.
Sterne, Agee & Leach, Inc.
Stifel, Nicolaus & Company, Inc.
Wells Nelson & Associates, LLC
William Blair & Co., L.L.C.

MCDC Issuers

Bank of Montreal (BMO Capital Markets GKST Inc.)
The Bank of New York Mellon Corp. (BNY Mellon Capital Markets, LLC)
BOK Financial Corp. (BOSC, Inc.)
Citigroup Inc. (Citigroup Global Markets Inc.)
Goldman Sachs Group, Inc. (Goldman, Sachs & Co.)
JPMorgan Chase & Co. (J.P. Morgan Securities LLC)
Bank of America Corporation (Merrill Lynch, Pierce, Fenner & Smith Incorporated)
Morgan Stanley (Morgan Stanley & Co. LLC)
Northern Trust Corporation (The Northern Trust Company)
Oppenheimer Holdings, Inc. (Oppenheimer & Co. Inc.)
Piper Jaffray Companies (Piper Jaffray & Co.)
Raymond James Financial, Inc. (Raymond James & Associates, Inc.)
Royal Bank of Canada (RBC Capital Markets, LLC)
Siebert Financial Corp. (Siebert Brandford Shank & Co., LLC)
Stifel Financial Corp. (Stifel, Nicolaus & Company, Inc.)

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33-9849; 34-75242; 39-2504; IC-31680]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual and related rules to reflect updates to the EDGAR system. The updates are being made primarily to add new submission form types N-CR and N-CR/A for Current Report of Money Market Fund Material Events; update submission form types ABS-15G and ABS-15G/A for Asset-backed securities reporting based on Rule 15Ga-2; no longer display OMB expiration date on submission form types 13F and 13H; no longer provide support for the 2013 US GAAP financial reporting and 2013 EXCH taxonomies; documentation only corrections to Chapter 3, "Index to Forms," of the "EDGAR Filer Manual, Volume II: EDGAR Filing," which include adding submission types 8-K12B and 8-K12B/A to Table 3-3, "Securities Exchange Act - Registration and Report Submission Types Accepted by EDGAR"; and documentation only changes to "EDGAR Filer Manual, Volume II: EDGAR Filing" for Section 508 compliance. The EDGAR system is scheduled to be upgraded to support this functionality on June 15, 2015.

DATES: Effective [Insert date of publication in the Federal Register.] The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: In the Division of Corporate Finance, for questions concerning Form ABS-15G, contact Heather Mackintosh at (202) 551-8111, in the

Division of Investment Management, for questions concerning Form N-CR, contact Heather Fernandez at (202) 551-6708, and in the Office of Information Technology, contact Tammy Borkowski at (202) 551-7208.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML Website.

The revisions to the Filer Manual reflect changes within Volume II entitled EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 32 (June 2015). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[3]

The EDGAR system will be upgraded to Release 15.2 on June 15, 2015 and will introduce the following changes:

EDGAR will be updated to add new submission form types N-CR and N-CR/A to EDGARLink Online. These new submission form types can be accessed by selecting the

---

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33-6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on May 11, 2015. See Release No. 33-9773 (May 26, 2015) [80 FR 29942].

[2] See Rule 301 of Regulation S-T (17 CFR 232.301).

[3] See Release No. 33-9773 in which we implemented EDGAR Release 15.1.1. For additional history of Filer Manual rules, please see the cites therein.

'EDGARLink Online Form Submission' link on the EDGAR Filing Website. Additionally, filers can construct XML submissions for these submission form types by following the "EDGARLink Online XML Technical Specification" document available on the SEC's Public Website (*http://www.sec.gov/info/edgar.shtml*).

Submission form types ABS-15G and ABS-15G/A will be updated based on final Rule 15Ga-2.

The OMB expiration date will no longer be displayed on submission form types 13F-HR, 13F-HR/A, 13F-NT, 13F-NT/A, 13H, 13H-A, 13H-Q, 13H-I, 13H-T, and 13H-R.

EDGAR will no longer provide support for the US-GAAP-2013 and EXCH-2013 taxonomies. Please see *http://www.sec.gov/info/edgar/edgartaxonomies.shtml* for a complete listing of supported standard taxonomies.

Documentation only corrections were made to Chapter 3, "Index to Forms," of the "EDGAR Filer Manual, Volume II: EDGAR Filing," which include adding submission types 8-K12B and 8-K12B/A to Table 3-3, "Securities Exchange Act - Registration and Report Submission Types Accepted by EDGAR."

Documentation only changes were made to "EDGAR Filer Manual, Volume II: EDGAR Filing" for Section 508 compliance.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S-T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

The updated EDGAR Filer Manual will be available for Website viewing and printing; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml*. You may also obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S.

Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Since the Filer Manual and the corresponding rule changes relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[4] It follows that the requirements of the Regulatory Flexibility Act[5] do not apply.

The effective date for the updated Filer Manual and the rule amendments is [Insert date of publication in the Federal Register]. In accordance with the APA,[6] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 15.2 is scheduled to become available on June 15, 2015. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S-T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[7] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange

---

[4] 5 U.S.C. 553(b).

[5] 5 U.S.C. 601 - 612.

[6] 5 U.S.C. 553(d)(3).

[7] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

Act of 1934,[8] Section 319 of the Trust Indenture Act of 1939,[9] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[10]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232 - REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 et seq.; and 18 U.S.C. 1350.

*****

2. Section 232.301 is revised to read as follows:

§232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: "General Information," Version 21 (May 2015). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer

[8] 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w, and 78ll.

[9] 15 U.S.C. 77sss.

[10] 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.

Manual, Volume II: "EDGAR Filing," Version 32 (June 2015). Additional provisions applicable to Form N-SAR filers are set forth in the EDGAR Filer Manual, Volume III: "N-SAR Supplement," Version 4 (October 2014). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available for Website viewing and printing; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml*. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to:
http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

By the Commission.

Brent J. Fields
Secretary

June 18, 2015

Robert W Errett

By: Robert W. Errett
Deputy Secretary

FEDERAL REGISTER

Vol. 80 No. 117
Thursday, June 18, 2015

Part XXIV

Securities and Exchange Commission

Unified Agenda

88 of 120

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release Nos. 33–9740, 34–74275, IA–4052, IC–31510, File No. S7–04–15]

Regulatory Flexibility Agenda

AGENCY: Securities and Exchange Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Securities and Exchange Commission is publishing the chair's agenda of rulemaking actions pursuant to the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 94 Stat. 1164) (Sep. 19, 1980). The items listed in the Regulatory Flexibility Agenda for spring 2015 reflect only the priorities of the chair of the U.S. Securities and Exchange Commission, and do not necessarily reflect the view and priorities of any individual commissioner.

Information in the agenda was accurate on March 24, 2015, the date on which the Commission's staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission since that date have been reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries.

The Commission is now printing in the **Federal Register**, along with our preamble, only those agenda entries for which we have indicated that preparation of an RFA analysis is required.

The Commission's complete RFA agenda will be available online at *www.reginfo.gov.*

DATES: Comments should be received on or before July 20, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–04–15 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–04–15. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anne Sullivan, Office of the General Counsel, 202–551–5019.

SUPPLEMENTARY INFORMATION: The RFA requires each Federal agency, twice each year, to publish in the **Federal Register** an agenda identifying rules that the Agency expects to consider in the next 12 months that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602(a)).The RFA specifically provides that publication of the agenda does not preclude an Agency from considering or acting on any matter not included in the agenda and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). The Commission may consider or act on any matter earlier or later than the estimated date provided on the agenda. While the agenda reflects the current intent to complete a number of rulemakings in the next year, the precise dates for each rulemaking at this point are uncertain. Actions that do not have an estimated date are placed in the long-term category; the Commission may nevertheless act on items in that category within the next 12 months. The agenda includes new entries, entries carried over from prior publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda.

The following abbreviations for the acts administered by the Commission are used in the agenda:

"Securities Act"—Securities Act of 1933

"Exchange Act"—Securities Exchange Act of 1934

"Investment Company Act"—Investment Company Act of 1940

"Investment Advisers Act"—Investment Advisers Act of 1940

"Dodd Frank Act"—Dodd-Frank Wall Street Reform and Consumer Protection Act

"Jobs Act"—Jumpstart Our Business Startups Act

The Commission invites public comment on the agenda and on the individual agenda entries.

By the Commission.

Dated: March 25, 2015.

Brent J. Fields,

Secretary.

DIVISION OF CORPORATION FINANCE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
392	Rules Governing the Offer and Sale of Securities Through Crowdfunding Under Section 4(a)(6) of the Securities Act.	3235–AL37
393	Amendments to Regulation D, Form D and Rule 156 Under the Securities Act	3235–AL46
394	Changes to Exchange Act Registration Requirements to Implement Title V and Title VI of the JOBS Act	3235–AL40

DIVISION OF CORPORATION FINANCE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
395	Amendments to Small and Additional Issues Exemptions Under the Securities Act	3235–AL39

DIVISION OF INVESTMENT MANAGEMENT—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
396	Temporary Rule Regarding Principal Trades With Certain Advisory Clients	3235–AL56

DIVISION OF TRADING AND MARKETS—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
397	Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934	3235–AL14

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Corporation Finance

Final Rule Stage

392. Rules Governing the Offer and Sale of Securities Through Crowdfunding Under Section 4(A)(6) of the Securities Act

Legal Authority: 15 U.S.C. 77a *et seq.;* 15 U.S.C. 78a *et seq.;* Pub. L. 112–108, secs 301 to 305

Abstract: The Commission proposed rules to implement Title III of the JOBS Act by prescribing rules governing the offer and sale of securities through crowdfunding under new section 4(a)(6) of the Securities Act.

Timetable:

Action	Date	FR Cite
NPRM	11/05/13	78 FR 66428
NPRM Comment Period End.	02/03/14	
Final Action	04/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sebastian Gomez Abero, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3500, Leila Bham, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5532.

RIN: 3235–AL37

393. Amendments to Regulation D, Form D and Rule 156 Under the Securities Act

Legal Authority: 15 U.S.C. 77a *et seq*

Abstract: The Commission proposed rule and form amendments to enhance the Commission's ability to evaluate the development of market practices in offerings under Rule 506 of Regulation D and address concerns that may arise in connection with permitting issuers to engage in general solicitation and general advertising under new paragraph (c) of Rule 506.

Timetable:

Action	Date	FR Cite
NPRM	07/24/13	78 FR 44806
NPRM Comment Period End.	09/23/13	
NPRM Comment Period Reopened.	10/03/13	78 FR 61222
NPRM Comment Period End.	11/04/13	
Final Action	04/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles Kwon, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3500, Ted Yu, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3500.

RIN: 3235–AL46

394. Changes to Exchange Act Registration Requirements To Implement Title V and Title VI of the Jobs Act

Legal Authority: Pub. L. 112–106

Abstract: The Commission proposed amendments to rules to implement Titles V (Private Company Flexibility and Growth) and VI (Capital Expansion) of the JOBS Act.

Timetable:

Action	Date	FR Cite
NPRM	12/30/14	79 FR 78343
NPRM Comment Period End.	03/03/15	
Final Action	04/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Steven G. Hearne, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3430.

RIN: 3235–AL40

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Corporation Finance

Completed Actions

395. Amendments to Small and Additional Issues Exemptions Under the Securities Act

Legal Authority: 15 U.S.C. 77c(b)

Abstract: The Commission adopted rules to implement section 401 of the JOBS Act. Section 401 added section 3(b)(2) to the Securities Act, which directs the Commission to adopt rules exempting from the registration requirements of the Securities Act securities offerings of up to $50 million.

Timetable:

Action	Date	FR Cite
NPRM	01/23/14	79 FR 3926
NPRM Comment Period End.	03/24/14	
Final Action	04/20/15	80 FR 21806
Final Action Effective.	06/19/15	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Zachary Fallon, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3354.

RIN: 3235–AL39

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Investment Management

Completed Actions

396. Temporary Rule Regarding Principal Trades With Certain Advisory Clients

Legal Authority: 15 U.S.C. 80b–6a; 15 U.S.C. 80b–11(a)

Abstract: Rule 206(3)–3T, a rule that provides investment advisers who are also registered broker-dealers an alternative means of compliance with the principal trading restrictions in section 206(3) of the Investment Advisers Act, will expire on December 31, 2014. The Commission adopted a temporary rule to extend that date to December 31, 2016.

Timetable:

Action	Date	FR Cite
NPRM	08/18/14	79 FR 48709
NPRM Comment Period End.	09/17/14	
Final Action	12/23/14	79 FR 76880
Final Action Effective.	12/31/14	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sarah Buescher, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5192, *Email: bueschers@sec.gov.*

RIN: 3235–AL56

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Trading and Markets

Long-Term Actions

397. Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934

Legal Authority: Pub. L. 111–203, sec 939A

Abstract: Section 939A of the Dodd Frank Act requires the Commission to remove certain references to credit ratings from its regulations and to substitute such standards of creditworthiness as the Commission determines to be appropriate. The Commission amended certain rules and one form under the Exchange Act applicable to broker-dealer financial responsibility, and confirmation of transactions. The Commission has not yet finalized amendments to certain rules regarding the distribution of securities.

Timetable:

Action	Date	FR Cite
NPRM	05/06/11	76 FR 26550
NPRM Comment Period End.	07/05/11	
Final Action	01/08/14	79 FR 1522
Final Action Effective.	07/07/14	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Guidroz, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–6439, *Email: guidrozj@sec.gov.*

RIN: 3235–AL14

[FR Doc. 2015–14378 Filed 6–17–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 231, 241, 271, and 276

Release Nos. 33-9850; 34-75250; IA-4122; IC-31684

Commission Guidance Regarding the Definition of the Terms "Spouse" and "Marriage" Following the Supreme Court's Decision in *United States v. Windsor*

AGENCY: SECURITIES AND EXCHANGE COMMISSION

ACTION: **Interpretation.**

SUMMARY: The Securities and Exchange Commission is publishing interpretive guidance to clarify how the Commission will interpret the terms "spouse" and "marriage" in light of the Supreme Court's ruling in *United States v. Windsor.*

EFFECTIVE DATE: [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Questions should be referred to Benjamin Schiffrin, Senior Litigation Counsel, Office of the General Counsel, at (202) 551-5003, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-9040.

SUPPLEMENTARY INFORMATION:

On June 26, 2013, the Supreme Court of the United States ruled in *United States v. Windsor* that Section 3 of the Defense of Marriage Act ("DOMA") is unconstitutional.[1] Section 3 provides that in "determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States," the "word 'spouse' refers only to a person of the opposite sex who is a husband or a wife," and the "word 'marriage' means only a legal union between one man and one woman as husband and

[1] 133 S. Ct. 2675 (2013).

wife."[2] This section, the Court stated, "enacts a directive applicable to over 1,000 federal statutes and the whole realm of federal regulations."[3] The Court found that this directive "undermines both the public and private significance of state-sanctioned same-sex marriages" and concluded that "no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity."[4] The Court thus held that Section 3 of DOMA was invalid.[5]

In light of this decision, the Commission will read the terms "spouse" and "marriage," where they appear in the federal securities statutes administered by the Commission, the rules and regulations promulgated thereunder, releases, orders, and any guidance issued by the staff or the Commission, to include, respectively, (1) an individual married to a person of the same sex if the couple is lawfully married under state law, regardless of the individual's domicile, and (2) such a marriage between individuals of the same sex. This guidance is consistent with *Windsor*.

List of Subjects

17 CFR Parts 231, 241, 271, and 276

Securities.

Amendments to the Code of Federal Regulations

For the reasons set out above, the Commission is amending Title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 231 – INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

---

[2] 1 U.S.C. § 7.

[3] 133 S. Ct. at 2690.

[4] *Id.* at 2694, 2696.

[5] *Id.* at 2696.

1. Part 231 is amended by adding Release No. 33-9850 and the release date of June 19, 2015, to the list of interpretive releases as follows:

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Commission Guidance Regarding the Definition of the Terms "Spouse" and "Marriage" Following the Supreme Court's Decision in *United States v. Windsor*	33-9850	June 19, 2015	[Insert FR Volume Number] FR [Insert FR Page Number]

PART 241 – INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. Part 241 is amended by adding Release No. 34-75250 and the release date of June 19, 2015, to the list of interpretive releases as follows:

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Commission Guidance Regarding the Definition of the Terms "Spouse" and "Marriage" Following the Supreme Court's Decision in *United States v. Windsor*	34-75250	June 19, 2015	[Insert FR Volume Number] FR [Insert FR Page Number]

PART 271 – INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. Part 271 is amended by adding Release No. IC-31684 and the release date of June 19, 2015, to the list of interpretive releases as follows:

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Commission Guidance Regarding the Definition of the Terms "Spouse" and "Marriage" Following the Supreme Court's Decision in *United States v. Windsor*	IC-31684	June 19, 2015	[Insert FR Volume Number] FR [Insert FR Page Number]

PART 276 – INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. Part 276 is amended by adding Release No. IA-4122 and the release date of June 19, 2015, to the list of interpretive releases as follows:

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Commission Guidance Regarding the Definition of the Terms "Spouse" and "Marriage" Following the Supreme Court's Decision in *United States v. Windsor*	IA-4122	June 19, 2015	[Insert FR Volume Number] FR [Insert FR Page Number]

By the Commission.

Robert W. Errett
Deputy Secretary

Dated: June 19, 2015

Commissioner Gallagher
Commissioner Piwowar
Dissented as to Municipal Advisor and NRSRO Bars

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4123 / June 22, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16642

In the Matter of JOHN V. JOHNSON, Respondent.	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against John V. Johnson ("Johnson" 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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Sections III.2. and III.4., below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Johnson, age 49, resides in Arvada, Colorado. From 2002 through 2008, Johnson was an analyst and assistant portfolio manager in the Denver, Colorado office of The Boston Company Asset Management LLC, a registered investment adviser based in Boston, Massachusetts.

2. On June 11, 2015, a final judgment was entered by consent against Johnson in the civil action entitled Securities and Exchange Commission v. Teeple, et al., Civil Action Number 13-CV-2010, in the United States District Court for the Southern District of New York. The judgment, *inter alia*, permanently enjoins Johnson from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

3. The Commission's complaint alleged that, Johnson executed purchases and sales of securities based on material non-public information that he received from a hedge fund analyst and that Johnson knew, recklessly disregarded, or should have known, that such material nonpublic information was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence.

4. On April 23, 2015, Johnson pled guilty to one count conspiracy to commit securities fraud in violation of 18 U.S.C. § 371 and one count of securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff before the United States District Court for the Southern District of New York, in United States v. John Johnson, 13-CR-190. Johnson was sentenced to two years of supervised release and ordered to perform 50 hours of community service.

5. The counts of the criminal indictment to which Johnson pled guilty alleged, inter alia, that Johnson, and others, participated in a scheme to defraud by executing securities trades based on material nonpublic information that had been disclosed or misappropriated in violation of duties of trust and confidence, and that he unlawfully, willfully and knowingly did so, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, in connection with the purchase and sale of securities.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Johnson 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Commissioner Piwowar
Dissented as to Municipal
Advisor and NRSRO Bars

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4124 / June 22, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16641

In the Matter of MATTHEW G. TEEPLE, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Matthew G. Teeple ("Teeple" 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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Sections III.2. and III.4. below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Teeple, 43, resides in San Clemente, California. From 2007 through 2013, Teeple was employed as a research analyst at Artis Capital Management L.P. ("Artis Capital"), a registered investment adviser based in San Francisco, California.

2. On June 11, 2015, a final judgment was entered by consent against Teeple, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Matthew G. Teeple, et al., No. 13-CV-2010 (VEC), in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged that, in connection with the purchase or sale of securities, Teeple knew, recklessly disregarded, or should have known, that material non-public information he received from an employee of Foundry Networks, Inc. was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence, and alleged that Teeple is liable for the trading by Artis Capital because he directly or indirectly caused Artis Capital to place trades and/or unlawfully tipped inside information to Artis Capital.

4. On May 28, 2014, Teeple pled guilty to one count of conspiracy to commit securities fraud in violation of Title 18 United States Code, Section 371 before the United States District Court for the Southern District of New York, in United States v. Matthew G. Teeple, No. 13-CR-339 (VEC). On October 24, 2014, a judgment in the criminal case was entered against Teeple. He was sentenced to a prison term of 60 months, followed by one year of supervised release, and ordered to forfeit $553,890 and to pay a fine of $100,000.

5. The count of the criminal indictment to which Teeple pled guilty alleged, inter alia, that Teeple participated in a scheme to defraud by executing securities trades based on material nonpublic information that had been disclosed or misappropriated in violation of duties of trust and confidence, and that he unlawfully, willfully and knowingly did so, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent Teeple 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75263 / June 22, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16643

In the Matter of JOSHUA A. YUDELL, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Joshua A. Yudell ("Yudell" 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 and the findings contained in Sections III.2 below, which are admitted, Respondent consents to the entry of this *Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions* (the "Order"), as set forth below.

III.

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

1. Yudell, age 37 and a resident of New York, New York, is and was the sole individual owning, operating, and controlling OCFB LLC; Oxford Advisors, Inc.; Oxford Capital Advisors, LLC; Oxford Capital Alternative Investments, Inc.; Oxford Capital Fund, LP; and Oxford Capital Fund, LLP (collectively, the "Yudell entities"). During the period relevant to this action, neither Yudell nor any of the Yudell entities was registered with the Commission as either a broker or a dealer, and neither was Yudell a registered representative associated with a broker or dealer registered with the Commission.

2. On June 16, 2015, a final judgment was entered by consent against Yudell, permanently enjoining him from future violations of Section 15(a)(1) of the Exchange Act, in the civil action entitled Securities and Exchange Commission v. Joshua A. Yudell, et al., Civil Action Number 1:15-cv-04548-JMF, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged that, Yudell, acting through various "doing business as" entities he controlled and using the mails or other means or instrumentalities of interstate commerce, effected transactions in or induced or attempted to induce the purchase or sale of securities while neither Yudell nor any of the entities he controlled were registered with the Commission as a broker or dealer or while Yudell was not associated with an entity registered with the Commission as a broker or dealer.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Yudell 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75266 / June 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16644

In the Matter of **ADAM S. GOTTBETTER,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Adam S. Gottbetter ("Respondent" or "Gottbetter") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

---

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

> The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any attorney . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 and III.4, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Gottbetter, age 47, is and has been an attorney, licensed to practice in the State of New York since 1993. At all relevant times, he resided in New York, New York, and was the managing partner of Gottbetter & Partners, LLP, a law firm located in New York, and the owner of Gottbetter Capital Markets, LLC, a broker-dealer registered with the Commission. Gottbetter currently resides in Palm Beach County, Florida.

2. On May 26, 2015, the Commission filed a complaint against Gottbetter in SEC v. Gottbetter et al., No. 15 Civ. 3528 (D.N.J.). On May 28, 2015, the court entered an order permanently enjoining Gottbetter, by consent, from future violations of Sections 5(a) and (c) and 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Gottbetter was also barred from participating in an offering of penny stock and ordered to pay $3,757,841.49 in disgorgement of ill-gotten gains and $837,491.15 in prejudgment interest.

3. The Commission's complaint alleged, among other things, that Gottbetter, acting as counsel to three different issuers of penny stock, Kentucky USA Energy, Inc. ("KYUS"), Dynastar Holdings, Inc. ("DYNA") and HBP Energy Corp. ("HBPE"), engaged in three schemes with other participants to manipulate the price and volume of each issuer's securities in the public market, with a view to selling his own shares at a profit. With respect to one issuer, KYUS, the complaint alleged that Gottbetter also engaged in an illegal unregistered offering of KYUS shares, gaining control of the issuer, and, together with his partners, orchestrating a subsequent promotional and manipulative trading campaign designed to inflate the stock price. When those efforts were successful, Gottbetter and his partners sold their shares into the inflated market at a significant premium to what they had paid for them.

4. On September 3, 2014, Gottbetter pled guilty to one count of conspiracy to commit securities fraud in violation of 18 United States Code, Section 371, before the United States District Court for the District of New Jersey, in United States v. Adam S. Gottbetter, 14 Cr. 467 (D.N.J.).

5. The criminal information to which Gottbetter pled guilty alleged, among other things, that Gottbetter engaged in a scheme to artificially inflate the price and volume of two penny stock issuers, DYNA and HBPE, through planned manipulative promotion and trading.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

Gottbetter is suspended from appearing or practicing before the Commission as an attorney.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75267 / June 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16645

In the Matter of **ADAM S. GOTTBETTER,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Adam S. Gottbetter ("Gottbetter" 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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Sections III.2. and III.4., and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

94 of 120

III.

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

1. Gottbetter, age 47, is and has been an attorney, licensed to practice in the State of New York since 1993. At all relevant times, he resided in New York, New York, and was the managing partner of Gottbetter & Partners, LLP, a law firm located in New York, and the owner of Gottbetter Capital Markets, LLC, a broker-dealer registered with the Commission. Gottbetter currently resides in Palm Beach County, Florida.

2. On May 26, 2015, the Commission filed a complaint against Gottbetter in SEC v. Gottbetter et al., No. 15 Civ. 3528 (D.N.J.). On May 28, 2015, the court entered an order permanently enjoining Gottbetter, by consent, from future violations of Sections 5(a) and (c) and 17(a) of the Securities Act of 1933, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Gottbetter was also barred from participating in an offering of penny stock and ordered to pay \$3,757,841.49 in disgorgement of ill-gotten gains and \$837,491.15 in prejudgment interest.

3. The Commission's complaint alleged, among other things, that Gottbetter, acting as counsel to three different issuers of penny stock, Kentucky USA Energy, Inc. ("KYUS"), Dynastar Holdings, Inc. ("DYNA") and HBP Energy Corp. ("HBPE"), engaged in three schemes with other participants to manipulate the price and volume of each issuer's securities in the public market, with a view to selling his own shares at a profit. With respect to one issuer, KYUS, the complaint alleged that Gottbetter also engaged in an illegal unregistered offering of KYUS shares, gaining control of the issuer, and, together with his partners, orchestrating a subsequent promotional and manipulative trading campaign designed to inflate the stock price. When those efforts were successful, Gottbetter and his partners sold their shares into the inflated market at a significant premium to what they had paid for them.

4. On September 3, 2014, Gottbetter pled guilty to one count of conspiracy to commit securities fraud in violation of 18 United States Code, Section 371, before the United States District Court for the District of New Jersey, in United States v. Adam S. Gottbetter, 14 Cr. 467 (D.N.J.).

5. The criminal information to which Gottbetter pled guilty alleged, among other things, that Gottbetter engaged in a scheme to artificially inflate the price and volume of two penny stock issuers, DYNA and HBPE, through planned manipulative promotion and trading.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act Respondent Gottbetter 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75271 / June 23, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4127 / June 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16648

In the Matter of

PHIL WILLIAMSON,

Respondent.

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

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Phil Williamson ("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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2. below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Investment Advisers Act of 1940 Making Findings and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Williamson was the manager and president of Sterling Financial Partners, Inc., an investment advisory firm that Williamson created, and Sterling Investment Fund, LLC ("Sterling Fund"), an investment vehicle Williamson created. At all relevant times, Williamson was a registered representative associated with registered broker-dealers or investment advisory firms. Williamson, 48 years old, is a resident of Miami, Florida.

2. On June 2, 2015, a final judgment was entered by consent against Williamson, permanently enjoining him from future violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action entitled Securities and Exchange Commission v. Phil Williamson, Civil Action Number 1:15-cv-22080-CMA, in the United States District Court for the Southern District of Florida.

3. The Commission's complaint alleged that, in connection with the sale of an interest in the Sterling Fund, Williamson falsely stated to investors that the Sterling Fund was invested in properties in Florida and Georgia, promised investors a yearly return on their investments ranging from 8-12%, sent out false account statements and valuations for the Sterling Fund, misused and misappropriated at least $748,000 in fund assets for his personal expenses and to pay purported returns to Sterling Fund investors, and otherwise engaged in a variety of conduct which operated as a fraud and deceit on the Sterling Fund and its investors.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Williamson 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; and

Pursuant to Section 15(b)(6) of the Exchange Act Respondent Williamson be, and hereby is 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Commissioner Piwowar
Dissented as to the
Municipal Advisor and
NRSRO Bars

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75270 / June 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16392

In the Matter of	ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934
BRADLEY A. HOLCOM,	
Respondent.	

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to accept the Offer of Settlement submitted by Bradley A. Holcom ("Respondent") pursuant to Rule 240(a) of the Rules of Practice of the Commission, 17 C.F.R. § 201.240(a), for the purpose of settlement of these proceedings initiated against Respondent on February 19, 2015, pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act").

II.

Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or in which the Commission is a party, and prior to a hearing pursuant to the Commission's Rules of Practice, 17 C.F.R. § 201.100 *et seq.*, Respondent consents to the entry of an Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Exchange Act ("Order"), as set forth below.

III.

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

1. Respondent was a licensed Real Estate and Mortgage Broker and engaged in the business of developing commercial and residential real estate in California, Arizona and elsewhere. In order to finance his real estate development business, from at least January 2004 and continuing into 2008, Respondent sold securities through an investment program called the "Trust Deed Investment Program," or TDIP.

2. Respondent marketed the securities through advertisements, sales brochures offered to the public at his offices, which were located in both California and Arizona, and through face-to-face meetings and telephone conversations with potential investors.

3. Respondent, through the TDIP, defrauded investors and obtained money and property by means of materially false and misleading statements in connection with the TDIP and Respondent sold unregistered securities without being registered in accordance with Section 15(b) of the Exchange Act.

4. On May 8, 2014, Respondent pleaded guilty to one count of wire fraud in violation of Title 18 United States Code, Section 1343, in *United States v. Holcom*, Crim. Case No. 13-CR-1723 in the United States District Court for the Southern District of California. On November 12, 2014, a judgment in the criminal case was entered against Respondent. Respondent was sentenced to a prison term of 121 months followed by three years of supervised release and ordered to make restitution in the amount of $26,233,661.00.

5. On February 6, 2015, a final judgment was entered against Respondent in the civil action entitled *Securities and Exchange Commission v. Bradley A. Holcom,* Civil Action No. 12-CV-1623, in the United States District Court for the Southern District of California, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act, that Respondent 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; 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75268 / June 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16647

In the Matter of **IREECO, LLC and** **IREECO LIMITED** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER, AND ORDERING CONTINUATION OF THE PROCEEDINGS**

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) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Ireeco, LLC and Ireeco Limited (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Exchange Act, Making Findings, Imposing Remedial Sanctions and a Cease-and-Desist Order, and Ordering Continuation of the Proceedings ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds that:

A. RESPONDENTS AND RELATED PARTIES

1. Respondent Ireeco, LLC is a Florida Limited Liability company formed in May 2006 by Stephen Parnell ("Parnell") and Andrew Bartlett ("Bartlett"). Ireeco, LLC was based in Boca Raton, Florida during the relevant time period, but changed its principal address to Greenville, South Carolina in March 2014. Ireeco, LLC has never been registered with the Commission in any capacity. From at least January 2010 through May 2012, Ireeco, LLC acted as an unregistered broker-dealer in connection with the sales of securities involving the EB-5 Visa Program.

2. Respondent Ireeco Limited is a Hong Kong entity formed by Parnell and Bartlett in May 2012 purportedly for tax purposes. Ireeco Limited is the 100% owner of Ireeco, LLC. Ireeco Limited has never been registered with the Commission in any capacity. From at least May 2012 through the present, Ireeco Limited has been acting as an unregistered broker-dealer in connection with the sales of securities involving the EB-5 Visa Program.

3. Parnell, age 57, is a resident of Boca Raton, Florida. He is the co-managing member of Ireeco, LLC, and also a principal and equal co-owner of Ireeco Limited. Parnell previously was registered with the State of Florida as an investment adviser representative with Investment Visa Advisors LLC.

4. Bartlett, age 61, is a resident of Osprey, Florida. He is the co-managing member of Ireeco, LLC, and also a principal and equal co-owner of Ireeco Limited.

B. FACTUAL BACKGROUND

(a) The EB-5 Visa Program

5. Congress created the EB-5 Visa Program back in 1990 to provide would-be immigrants with the opportunity to become lawful permanent residents by investing in the U.S. economy. To qualify for an EB-5 visa, the foreign applicant first must invest $1 million ($500,000 if in a targeted employment area)[1] in a USCIS-approved U.S. commercial enterprise. USCIS defines a "commercial enterprise" as any for-profit activity formed for the ongoing conduct of lawful business. Once the investment requirement has been met, the foreign applicant then can apply for a conditional green card (I-526 Petition), which is good for two years from approval. If the investment creates or preserves at least 10 full-time jobs during that time, the foreign applicant then may apply to have the conditions removed (I-829 Petition) from his or her green card and live and work in the U.S. permanently.

6. In 1992, a program was enacted that set aside a certain number of EB-5 visas for investments that were affiliated with an economic unit known as a "regional center."[2] A regional

---

1 A targeted employment area is an area that, at the time of investment, is a rural area or an area experiencing unemployment of at least 150 percent of the national average rate.

2 The EB-5 visa requirements for an investor under the pilot program are essentially the same as in the standard EB-5 investor program, except the pilot program provides for investments in USCIS-approved "regional centers."

center is defined as any economic entity, public or private, which is involved with the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment. EB-5 regional centers are designated by the USCIS to administer EB-5 investment projects based on proposals for promoting economic growth.

7. An applicant investor is only required to invest $500,000 if done through a regional center. Many regional centers also require each applicant investor to pay an administrative fee. The administrative fee varies from project to project and typically is used to offset legal fees, travel, and other expenses incurred by the regional center. By investing through a regional center, the foreign investor is relieved of the day-to-day operations of the business and is not responsible for the direct management of the center's investment. As a result, the vast majority of issued EB-5 visas have been for applicants who invest through regional centers. Under the regulations, the EB-5 Visa Program is capped at 10,000 visas annually.

(b) Respondents' EB-5 Business

8. Parnell and Bartlett formed Ireeco, LLC in 2006. Between at least January 2010 and May 2012, Ireeco, LLC solicited foreign investors who wished to invest in the EB-5 Visa Program through regional centers. Ireeco, LLC employed a small staff of four to five people located in the United States, including Parnell and Bartlett, and operated primarily through its website, www.whicheb5.com. According to its website, Ireeco, LLC worked with foreign individuals to determine if the EB-5 Visa Program would work for them. Ireeco, LLC stated that it provided foreign investors with the information and education they would need in choosing the right regional center to invest with. The website included information about Parnell and Bartlett's background and experience.

9. Ireeco, LLC claimed to have provided independent EB-5 "education and information" to over 3,300 immigrants from 34 countries. It also claimed to have a 100% success rate in that all of its customers were successful in obtaining their I-526 petitions and that those who reached the I-829 petition stage were successful in obtaining their unconditional green card. On its website, Ireeco, LLC cautioned potential investors that "[e]very regional center is in competition to sell you on why their business plan is better than anyone else's; they want your money and thus they carefully paint a picture of all the positive aspects of their regional center often without making you aware of any potential negatives."

10. In May 2012, Parnell and Bartlett formed Ireeco Limited, a Hong Kong entity, and it became a managing member of Ireeco, LLC. Ireeco Limited has since replaced Ireeco, LLC as the company that solicits foreign investors for EB-5 investments and is now the contracting party with the regional centers. Although Ireeco Limited is currently listed as the owner of the website, www.whicheb5.com, a "U.S. Admin Office" address for the company out of Greenville, South Carolina appears prominently on the site. Ireeco Limited relied on the same small staff of four to five people located in the United States, including Parnell and Bartlett, that operated Ireeco, LLC.

(c) Unregistered Broker Activity

11. Through their website, Respondents offered to assist foreign investors in choosing the right EB-5 projects. As a first step, the potential investor would make a request for information

on through the website and then would be contacted by Parnell or another of Respondents' representatives. The objective of that first contact with the potential investor was to ascertain the applicant's interest in the program and level of knowledge. In at least 10 instances, potential investors already were residing in the U.S. on some other type of temporary visa when they were solicited by Ireeco, LLC or later by Ireeco Limited.

12. After the initial call with the potential investor, representatives from Respondents would try to arrange for a more substantive follow-up call with the investor to discuss the next step in the EB-5 investment process. At that point, Respondents proceeded to send EB-5 industry publications and other information about the program to the potential investor via email. Respondents also provided the investor with marketing information touting Parnell's and Bartlett's experience and expertise in EB-5 investments. If Respondents were unable to set up a follow-up call with the investor and months had passed since that initial contact, Respondents would email the prospect to see if he or she remained interested in the EB-5 Visa Program. Respondents would send these emails automatically to potential customers three months after the first inquiry, and then again after 18 months.

13. If Parnell or another of Respondents' representatives were able to arrange follow-up calls with potential investors, they would then talk to the prospects about their background, visa status, understanding of how U.S. businesses operate, area of business in their home country, and interest in a particular geographical area or a specific type of EB-5 project. Based on the information obtained from the potential customer, Respondents determined first if he or she qualified for the EB-5 project, and second, what his or her investment preferences were.

14. Once Respondents had a better understanding of the potential investor's EB-5 preferences and suitability, Respondents gave the investor one or more EB-5 regional center projects as possible choices, as well as background information about those centers. Respondents performed "due diligence" on each of the regional centers it selected for their customers.

15. After investors identified which of the regional centers they were most interested in, Respondents "registered" the customers with the regional center by providing their names, contact information and visa status. The investors then dealt directly with the regional center, with Respondents being consulted by investors on occasion. The regional centers provided their offering documents directly to investors. Investors also would contact Respondents from time to time if they had questions about the investments or offering materials.

16. Respondents did not collect fees directly from the investors. Instead, under the "referral partner agreements" first between Ireeco, LLC and the regional centers it selected for its customers and later between Ireeco Limited and the regional centers, the centers compensated Respondents for each registered investor who invested funds in an EB-5 offering. Respondents earned the fee once the investor's I-526 petition (conditional green card) was approved by USCIS. The fee was a commission based on a fixed portion of the "administrative fee" the investor paid to the regional center and averaged around $35,000 per investor.

17. From January 2010 through the present, Respondents were paid fees for actively soliciting over 158 foreign investors for selected regional centers. Together, these investors

invested a combined total of $79 million in the regional centers. Respondents referred most of the investors to the same handful of regional centers.

C. VIOLATIONS

18. As a result of the conduct described above, Respondents willfully violated Section 15(a)(1) of the Exchange Act by using the mails or any means or instrumentality of interstate commerce to engage in the business of effecting transactions in, or inducing or attempting to induce the purchase or sale of, securities for the accounts of others without registering as a broker-dealer with the Commission or without associating with a broker-dealer registered with the Commission.

IV.

Pursuant to this Order, Respondents agree to additional proceedings in this proceeding to determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalties pursuant to Sections 21B and 21C of the Exchange Act, and, if so, the amount(s) of the disgorgement and/or civil penalties. If disgorgement is ordered, Respondents shall pay prejudgment interest thereon, calculated from January 1, 2010, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with such additional proceedings, Respondents agree: (a) they will be precluded from arguing they did not violate the federal securities laws described in this Order; (b) they may not challenge the validity of their Offer or this Order; (c) solely for the purposes of such additional proceedings, the findings made in this Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer, and to continue proceedings to determine whether it is appropriate to order disgorgement of ill-gotten gains and/or civil penalties pursuant to Sections 21B and 21C of the Exchange Act, and, if so, the amount(s) of the disgorgement and/or civil penalties, in accordance with Section IV above.

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

A. Respondents cease and desist from committing or causing any violations and any future violations of Section 15(a) of Exchange Act.

B. Respondents are censured.

C. The hearing officer shall conduct additional proceedings to determine whether it is appropriate to order disgorgement of ill-gotten gains and/or civil penalties pursuant to Sections

21B and 21C of the Exchange Act, and, if so, the amount(s) of the disgorgement and/or civil penalties, in accordance with Section IV above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75265 / June 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-13714

In the Matter of Ark Asset Management Co., Inc. Respondent.	ORDER AUTHORIZING THE TRANSFER OF REMAINING FUNDS AND ANY FUTURE FUNDS RETURNED TO THE DISGORGEMENT FUND TO THE U.S. TREASURY, DISCHARGING THE PLAN ADMINISTRATOR, AND TERMINATING THE DISGORGEMENT FUND

On September 29, 2010, the Securities and Exchange Commission ("Commission" or "SEC") issued an Order Making Findings and Imposing Sanctions Pursuant to Section 203(k) of the Investment Advisers Act of 1940 (the "Order") against Respondent Ark Asset Management Co., Inc. ("Ark") (Advisers Act Rel. No. 3091 (September 29, 2010)). In the Order, the Commission found, among other things, that between August 2000 and December 2003, Ark engaged in fraudulent trade allocation practices by favoring certain proprietary accounts over other client accounts in the allocation of securities. The Commission also found that Ark filed materially misleading Form ADV filings during the same period. Ark was ordered to pay disgorgement of $19,800,000 to the Commission, which was deemed satisfied by the payment of $750,000 in light of the limited assets available in the Ark bankruptcy estate. On October 13, 2010, Ark paid the $750,000 and the amount was placed in a non-interest bearing account at the U.S. Department of the Treasury.

On January 6, 2011, the Commission issued a Notice of Proposed Plan of Distribution and Opportunity for Comment pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans (Exchange Act Rel. No. 63666 (January 6, 2011)). On March 1, 2011, the Commission issued an Order Approving Distribution Plan and Appointing a Plan Administrator, whereby Neal Jacobson, a Commission employee, was appointed as the Plan Administrator (Exchange Act Rel. No. 63993 (March 1, 2011)).

The Plan of Distribution ("Plan") provides that the Disgorgement Fund be distributed to clients harmed by Ark's misconduct. On July 27, 2012, the Commission issued an Order Directing Disbursement of Disgorgement Fund in the amount of $740,617 (Exchange Act Rel. No. 67524 (July 27, 2012)). Subsequently, the Commission staff learned that incorrect information about one of the eligible recipients had been provided to the Plan Administrator. In the process of correcting that information, the amount available for distribution was affected and an Amended Order Directing Disbursement of Disgorgement Fund in the amount of $737,571 was issued by the Commission on August 13, 2013 (Exchange Act Rel. No. 70171 (August 13, 2013)). On or about September 16, 2013, $737,571 was distributed to twenty (20) injured clients. All distributions were accepted by the injured clients, and no amounts were returned to the Disgorgement Fund. In addition, the Disgorgement Fund paid a total of $950 in taxes and $10,880 in Tax Administrator fees and expenses. A balance of $599 remains in the Disgorgement Fund.

The Plan provides that the Disgorgement Fund shall be eligible for termination, and the Plan Administrator discharged, after all of the following have occurred: (a) a final accounting, in an SEC standard accounting format provided by the staff, has been submitted by the Plan Administrator for approval of, and has been approved by, the Commission, and (b) all taxes, fees and expenses have been paid. A final accounting, which was submitted to the Commission for approval as required by Rule 1105(f) of the Commission's Rules on Fair Fund and Disgorgement Plans and as set forth in the Plan, is now approved. Staff has verified that all taxes, fees, and expenses have been paid, and the Commission is in possession of the remaining funds.

Accordingly, IT IS ORDERED that:

A. The remaining Disgorgement Fund balance of $599.00, and any future funds returned to the Disgorgement Fund, shall be transferred to the U.S. Treasury.

B. The Plan Administrator, Neal Jacobson, is discharged; and

C. The Disgorgement Fund is terminated.

By the Commission.

Brent J. Fields
Secretary

Lynn M. Powalski

By: Lynn M. Powalski
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75272 / June 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16649

In the Matter of **Ironridge Global Partners, LLC, Ironridge Global IV, Ltd.** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

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) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Ironridge Global Partners, LLC ("Ironridge") and Ironridge Global IV, Ltd. ("Global IV") (collectively referred to as "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

Summary

1. This matter involves violations of the broker-dealer registration provisions by Ironridge Global IV, Ltd. ("Global IV"), a British Virgin Islands business company, and its formerly San Francisco, California-based parent company, Ironridge Global Partners, LLC ("Ironridge"). Between April 2011 through March 2014, Ironridge willfully violated Sections 15(a) and 20(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Global IV willfully violated Section 15(a) of the Exchange Act through Global IV's operation as an unregistered dealer by engaging in serial underwriting activity, providing related investment advice, and receiving and selling

billions of shares in connection with self-described financing services for domestic microcap stock companies ("microcap issuers") explicitly designed to utilize the registration exemption contained in Section 3(a)(10) of the Securities Act of 1933 ("Securities Act"). In relevant part, Section 3(a)(10) of the Securities Act exempts from registration securities issued in court-approved exchanges for "bona fide outstanding claims." As part of its business model, Ironridge designed and openly promoted a "liabilities for equity" or "LIFE" financing program, through which Ironridge arranged to have Global IV purchase outstanding claims from microcap issuers' creditors and then settle those claims through Section 3(a)(10) exchanges. Under the resulting settlements, Global IV received steeply discounted shares, which Global IV subsequently sold at the direction of Ironridge's principals. Between April 2011 and March 26, 2014, at the direction of Ironridge, Global IV engaged in 33 separate Section 3(a)(10) exchanges with 28 microcap issuers. During this period, Global IV received and sold approximately 5.5 billion shares of the issuers' common stock, thereby realizing proceeds of approximately $56 million and net profits of approximately $22 million. Since March 2014, Ironridge has continued to promote its LIFE program, and Global IV has continued to receive and sell shares pursuant to Section 3(a)(10) exchanges.

Respondents

2. Ironridge Global Partners, LLC ("Ironridge") is a Delaware limited liability company. Prior to July 2014, Ironridge's principal place of business was in San Francisco, California. Ironridge has four principals ("Ironridge principals" or "Ironridge's principals"), all of whom are natural persons who reside in the United States and are United States citizens. Until January 2015, Ironridge was the sole shareholder in Ironridge Global IV, Ltd. Ironridge is not registered with the Commission in any capacity.

3. Ironridge Global IV, Ltd. ("Global IV") is a British Virgin Islands business company with its principal place of business in the British Virgin Islands. Global IV was a wholly owned subsidiary of Ironridge prior to January 2015, and is not registered with the Commission in any capacity.

4. Prior to November 30, 2012, three of the five directors of Global IV were Ironridge principals.

5. Although the three Ironridge principals resigned as Global IV directors in November 2012, under Global IV's "Amended & Restated Articles of Association," Ironridge, as the former sole shareholder of Global IV, had the power to remove the directors of Global IV with or without cause, and without notice.

6. On behalf of Ironridge, Ironridge's principals thus exercised control of Global IV.

Ironridge Develops a Finance Model Based on the Registration Exemption Contained in Section 3(a)(10) of the Securities Act

7. In relevant part, Section 3(a)(10) of the Securities Act provides an exemption from registration for securities issued in exchange for bona fide outstanding claims approved by any court or other authorized body after a fairness hearing is conducted.

8. Since its formation, Ironridge has marketed itself as a source of innovative financing solutions for microcap issuers.

9. In particular, one of Ironridge's principals designed a finance model whereby Global IV would purchase outstanding claims against microcap issuers and then settle those claims through Section 3(a)(10) exchanges.

10. Ironridge named this finance model the "Liability for Equity (LIFE) program,"(the "LIFE program") and touted it as an "innovative financing structure" on its website and in certain business and finance publications.

Ironridge's Solicitation of, and Negotiations with Microcap Issuers and Their Creditors

11. From approximately April 2011 through March 2014 ("the relevant period"), Ironridge identified and contacted certain microcap issuers as potential candidates for financing through Section 3(a)(10) exchanges on behalf of Global IV.

12. In some instances, with Ironridge's authorization, Global IV paid registered broker-dealers and other persons commissions for related referral services.

13. Ironridge's principals advised the microcap issuers as to the structure and purported benefits of the contemplated Section 3(a)(10) exchanges on behalf of Global IV.

14. Ironridge negotiated the terms of the transaction with the microcap issuers and drafted the term sheet executed by the microcap issuers on behalf of Global IV.

15. Additionally, certain of Ironridge's principals advised and assisted microcap issuers in identifying various creditor claims (e.g., inventory suppliers and law firm bills) for a possible purchase by Global IV.

16. After identifying creditor claims to be included in a contemplated Section 3(a)(10) exchange, and with the consent of the microcap issuers, certain of Ironridge's principals then negotiated directly with the creditors for the purchase of the claims by Global IV.

17. Global IV purchased the claims of certain creditors of microcap issuers participating in its LIFE program through a Receivable Purchase Agreement ("RPA") executed separately with each such creditor.

18. Pursuant to the terms of the RPA, Global IV typically agreed to pay each creditor for the entire amount of the debt owed by the microcap issuer, typically on a payment schedule that calls for several monthly payments in exchange for an immediate assignment of the rights, title, and interest in the underlying claim.

19. Certain of Ironridge's principals contacted the issuer's creditors, directly negotiated the terms of the associated RPAs on behalf of Global IV with these creditors , and directed Global IV to execute the RPAs.

Issuance of Unrestricted Stock to Global IV Through Section 3(a)(10) Exchanges

20. During the relevant period, after Global IV was assigned claims against a particular microcap issuer, it filed suit (styled as a collection action for breach of contract) against the microcap issuer in California state court.

21. Through related "fairness hearings," the court approved the terms of related settlement agreements through which Global IV would be issued unrestricted stock in exchange for extinguishing its claims against the microcap stock companies participating in the LIFE program.

22. The court-approved settlement agreements provided Global IV with an initial issuance of shares subject to adjustment based on the operation of a price protection formula.

23. Pursuant to the price protection formulas contained in the settlement agreements, Global IV was entitled to receive additional shares at a discount if the microcap issuers' share prices declined during specified periods following court approval of the exchanges.

Global IV's Sale of Shares Issued in Section 3(a)(10) Exchanges

24. During the relevant period, Global IV engaged in 33 separate Section 3(a)(10) exchanges with 28 microcap issuers. In connection with underlying claims totaling approximately $35 million, Global IV sold approximately 5.5 billion shares of the issuers' stock for total proceeds of approximately $56 million, thereby realizing a profit of approximately $22 million.

25. As a result of Global IV's Section 3(a)(10) transactions during the relevant period, the public float of shares for many of the issuers increased significantly. For 14 of the issuers, the Section 3(a)(10) transactions increased the shares outstanding

by 25% or more. For nine of these issuers, the transactions increased the shares outstanding by at least 50%.

26. On average, Global IV began selling the initial shares that it received from the 33 Section 3(a)(10) exchanges at issue within four trading days of the shares being cleared for trading.

27. Global IV continued to sell the microcap issuers' shares through the applicable Calculation Period.

28. Global IV's sales frequently represented a significant percentage of the total daily trading volume for the issuer's shares.

29. In six of the 33 Section 3(a)(10) transactions at issue, Global IV's sale of shares on certain days represented 100% of the total daily trading volume for that security.

30. For 15 of the 33 Section 3(a)(10) transactions at issue, Global IV's sales represented 90% or more of the total daily trading volume for that security on certain days.

Mechanics of Global IV's Stock Sales

31. Global IV deposited the stock issued through the Section 3(a)(10) exchanges in various domestic and foreign brokerage accounts held by Global IV.

32. Certain of Ironridge's principals had trading authority over Global IV's brokerage accounts and thus controlled or directed the deposit of stock into those accounts.

33. Thereafter, Global IV sold stock obtained through Section 3(a)(10) exchanges in the open market.

34. Certain of Ironridge's principals had trading authority over Global IV's brokerage accounts and thus controlled or directed Global IV's sale of shares from those accounts.

35. Global IV's sale of the shares that it received from the microcap issuers through Section 3(a)(10) exchanges typically drove down the share price and increased the number of shares that Global IV received under the applicable price protection formulas.

36. At times, Ironridge directed microcap issuers participating in the LIFE program to issue additional shares to Global IV pursuant to the price protection formulas contained in their respective settlement agreements.

37. Certain of Ironridge's principals sent the requests for additional shares directly to the issuers or to the issuers' transfer agents.

38. In sending the requests referred to in Paragraph 37, above, the Ironridge principals controlled or directed the issuer's issuance of new shares to Global IV.

Global IV's Use of Sale Proceeds

39. Global IV deposited the proceeds from the sale of these shares into brokerage accounts and/or bank accounts held in the name of Global IV. Using funds in these accounts, Global IV then made payments to the creditors whose claims were purchased by Global IV and settled through the Section 3(a)(10) exchanges

40. Because certain of Ironridge's principals had trading authority and/or control over the Global IV brokerage and bank accounts, those principals controlled or directed transfers from these accounts to the creditors.

Ongoing Conduct

41. Ironridge continues to promote its LIFE program, and Global IV continues to receive and sell shares pursuant to Section 3(a)(10) exchanges.

Violations

42. As a result of the conduct described above, Global IV has willfully violated Section 15(a) of the Exchange Act, which prohibits a broker or dealer to effect transactions in any security without registering with the Commission.

43. As a result of the conduct described above, Ironridge willfully violated Sections 15(a) and 20(b) of the Exchange Act.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 15(a) and 20(b) of the Exchange Act, whether Respondents should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondents should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Ironridge as provided for in the Commission's Rules of Practice.

This Order shall be served upon Global IV as provided for in Rule 141(a)(2)(iv) of the Commission's Rules of Practice, 17 C.F.R § 201.141(a)(2)(iv), by any method specified in paragraph (a)(2) of that rule, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country where Global IV may be found including, in the case of the British Virgin Islands, in accordance with the Hague Service Convention for Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Piwowar Dissented as to Advisers Act Section 207 charges against RL Strauss + Pekin Singer Strauss Asset Mgmt, Inc., and as to the supervisory suspension against RL Strauss.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4126 / June 23, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31688 / June 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16646

In the Matter of

Pekin Singer Strauss Asset Management Inc., Ronald L. Strauss, William A. Pekin, and Joshua D. Strauss,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, 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 Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Pekin Singer Strauss Asset Management Inc. ("Pekin Singer"), Ronald L. Strauss ("R. Strauss"), William A. Pekin ("W. Pekin"), and Joshua D. Strauss ("J. Strauss") (collectively referred to herein as "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer 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 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, 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 Respondents' Offers, the Commission finds that:

Summary

1. These proceedings arise from compliance failures at Pekin Singer, a registered investment adviser. Pekin Singer failed to conduct timely annual compliance program reviews in 2009 and 2010 and failed to implement and enforce provisions of its policies and procedures and code of ethics during this same period. R. Strauss, Pekin Singer's President at the time, dedicated insufficient resources to compliance, which contributed substantially to Pekin Singer's compliance failures.

2. In addition, from 2011 to early 2014, Pekin Singer, W. Pekin, and J. Strauss kept or placed a substantial number of their clients in the investor share class of Appleseed Fund ("Appleseed"), a mutual fund managed by Pekin Singer, when those clients were eligible for the less expensive institutional share class. Pekin Singer clients paid an additional 25 basis points in fees on their Appleseed shares beyond what the clients would have paid had they been invested in the less expensive share class. Pekin Singer received the additional 25 basis points in Appleseed fees generated by having Pekin Singer clients in the more expensive share class. By selecting the less economical share class for its clients, Pekin Singer failed to seek best execution for its clients and failed to adequately disclose its conflict of interest in selecting a share class for clients that would generate more fees for the firm.

Respondents

3. **Pekin Singer Strauss Asset Management Inc.** is a Delaware corporation with its principal place of business in Chicago, Illinois. Pekin Singer has been registered with the Commission as an investment adviser since December 1989. It has approximately $1.07 billion in assets under management. The majority of Pekin Singer's clients are high net worth individuals. Pekin Singer also serves as investment adviser to Appleseed, a registered open-end investment company with net assets of approximately $280 million. At the beginning of 2009, the firm had approximately $479 million in assets under management and Appleseed had approximately $9 million of net assets.

4. **Ronald Lee Strauss**, age 75, resides in Wilmette, Illinois. From 2004 until June 30, 2014, he served as President of Pekin Singer. On June 30, 2014, R. Strauss retired as President. He now serves as a senior advisor at Pekin Singer and is a member of Pekin Singer's Board of Directors.

5. **William Andrew Pekin**, age 43, resides in Chicago, Illinois. W. Pekin is a portfolio manager for Appleseed and high net worth clients. Effective July 1, 2014, W. Pekin became Chairman of Pekin Singer.

6. **Joshua Daniel Strauss**, age 42, resides in Evanston, Illinois. J. Strauss is a portfolio manager for Appleseed and high net worth clients. Effective July 1, 2014, J. Strauss became co-CEO of Pekin Singer.

Other Relevant Entities and Individual

7. **Appleseed Fund** is an open-end world allocation value mutual fund formed in December 2006 by Pekin Singer. Appleseed is a series of Unified Series Trust, an Ohio business trust registered as an open-end investment company. Appleseed's net assets grew from approximately $9 million as of January 2009 to approximately $280 million in 2014.

8. The **"Chief Compliance Officer"** joined Pekin Singer in November 2006 and was named Pekin Singer's chief compliance officer ("CCO") in 2007. The Chief Compliance Officer also became Chief Financial Officer ("CFO") of Pekin Singer in 2009. The Chief Compliance Officer ceased his compliance role in April 2014 and remains at the firm as CFO.

9. **Unified Series Trust** ("UST") is a registered open-end investment company established under Ohio law. UST is an administrator-sponsored fund complex that provides back office support, fund accounting, compliance support, a board of trustees, and other services to mutual funds managed by unaffiliated registered investment advisers. There are twelve funds in the UST complex, including Appleseed.

Pekin Singer's Compliance Program Failures

Background

10. Pekin Singer has been a registered investment adviser since 1989. Pekin Singer's client base primarily consists of high net worth individuals, or separately managed accounts ("SMAs"). In December 2006, Pekin Singer launched Appleseed, an open-end mutual fund that is a series of the UST fund complex. Pekin Singer serves as investment adviser to Appleseed.

11. From 2004 through June 30, 2014, R. Strauss, as Pekin Singer's President, managed the day-to-day operations of the firm and supervised all of Pekin Singer's employees, including the Chief Compliance Officer.

12. From 2005 to June 2007, Pekin Singer employed a chief compliance officer who also served as Pekin Singer's chief financial officer. By 2007, that individual had become a part-time employee and decided to phase out of those positions in anticipation of retirement.

13. In November 2006, R. Strauss hired the Chief Compliance Officer to fill a variety of roles. Initially, the Chief Compliance Officer's roles included backup trader, backup trade reconciliation, research analyst, and portfolio manager for a handful of accounts, prior to him becoming the Chief Compliance Officer.

14. In June 2007, R. Strauss promoted the Chief Compliance Officer to serve as Pekin Singer's new CCO. However, R. Strauss knew the Chief Compliance Officer had limited prior experience and training in compliance prior to becoming CCO. The Chief Compliance Officer retained his other responsibilities in addition to his new CCO role.

15. R. Strauss did not provide the Chief Compliance Officer with sufficient guidance regarding his duties and responsibilities as the new CCO and instead left it to the Chief Compliance Officer and the prior CCO to manage the transition. R. Strauss did not provide the Chief Compliance Officer with staff to assist him with compliance, other than the prior CCO, who was then part-time and was serving in an advisory capacity. The Chief Compliance Officer was required to seek R. Strauss's approval for compliance expenditures, consistent with Pekin Singer's approval process for business expenditures.

Pekin Singer's Failure to Conduct Annual Compliance Program Reviews

16. Gradually, as the Chief Compliance Officer learned certain aspects of the CCO role from the former CCO and from attending a compliance conference in 2008, he noticed weaknesses in Pekin Singer's compliance program and began making some improvements. For example, in 2007 and 2008, he implemented new testing in the area of trade allocation and execution and also drafted and implemented a new personal trading policy requiring preclearance of trades.

17. Notwithstanding these changes, the Chief Compliance Officer recognized that Pekin Singer's compliance program and testing needed further improvement. Indeed, Pekin Singer's 2008 annual compliance program review was limited to year-end testing of trade allocation and execution. However, the Chief Compliance Officer lacked experience, resources, and knowledge as to how to adopt and implement an effective compliance program or how to conduct a comprehensive and effective annual compliance program review.

18. In 2009 and 2010, R. Strauss did not make the compliance program a priority for the firm. He directed the Chief Compliance Officer to prioritize his investment research responsibilities over compliance. R. Strauss also gave the Chief Compliance Officer other responsibilities at the firm that impacted his ability to focus on compliance, including naming him CFO in 2009. Between his research and other responsibilities, the Chief Compliance Officer was only able to devote between 10% and 20% of his time on compliance matters.

19. As a result, the Chief Compliance Officer was unable to complete timely annual compliance program reviews for 2009 or 2010. In fact, nearly three years passed between Pekin Singer's completion of its limited annual compliance program review in early 2009 and the completion of the next annual review in late 2011. Throughout 2009 and 2010, Pekin Singer did not adequately evaluate the effectiveness of its compliance policies and procedures and code of ethics or test the firm's implementation.

20. In 2009 and 2010, the Chief Compliance Officer told R. Strauss on multiple occasions that he needed help to fulfill his compliance responsibilities, including the annual compliance program review. However, when the Chief Compliance Officer expressed concern

about not completing compliance testing and warned that Pekin Singer would not be ready for an SEC examination, R. Strauss told him that the firm's primary responsibility was serving clients, and that they could address any problems that came up in an examination at that time.

21. Beginning in late 2009, after consultation with R. Strauss, the Chief Compliance Officer began exploring the possibility of retaining a compliance consultant to assist him. In the first half of 2010, the Chief Compliance Officer obtained proposals from two compliance consultants to assist Pekin Singer with its compliance program and its annual compliance program review. Although the Chief Compliance Officer viewed the proposals favorably, R. Strauss passed on the first proposal because he viewed it as too expensive and remained undecided on the second proposal through the remainder of 2010. By mid-2010, the Chief Compliance Officer had communicated to R. Strauss a heightened sense of urgency regarding the need to complete an annual compliance review, yet R. Strauss did not engage one of the consultants to assist him and the annual compliance review remained uncompleted for a second year.

22. In January 2011, Pekin Singer engaged a compliance consultant to assist the Chief Compliance Officer. The decision to hire the compliance consultant at that time was primarily driven by: (1) the fact that during the annual management agreement renewal process for Appleseed in January 2011, Pekin Singer reported to UST's Board of Trustees that the firm had failed to conduct an annual compliance program review for two consecutive years, and (2) the realization that a compliance consultant was likely needed in order for Pekin Singer to complete the pending annual reviews. R. Strauss recognized at that time that addressing the compliance issues was important for maintaining Pekin Singer's relationship with UST. Nevertheless, R. Strauss narrowed the scope of the engagement – and thus the amount of assistance for the Chief Compliance Officer – from a more comprehensive compliance review to limited trade testing for a six-month period in 2010, in part to reduce the cost of the engagement.

23. The compliance consultant issued a report in June 2011 enumerating several compliance deficiencies at Pekin Singer. Beginning in May 2011, the Commission's Chicago Regional Office Branch of Investment Management Examinations (the "SEC exam staff") conducted an examination of Pekin Singer and cited the firm for several compliance deficiencies, most notably the failure to conduct annual compliance program reviews for two years and code of ethics violations by a Pekin Singer analyst relating to personal trading.

24. It took the firm an additional six months after receiving the compliance consultant's report to complete its compliance program review covering 2009 and 2010. The lack of assistance and support for the Chief Compliance Officer contributed substantially to the delay in completing the annual reviews.

25. Pekin Singer completed an annual compliance program review covering 2009 and 2010 on December 15, 2011, partially in response to a firm deadline from UST's Board that the reviews be completed by that date. Since 2011, Pekin Singer has completed all annual reviews on a timely basis.

Pekin Singer's Undetected Compliance Violations

26. There were several violations of Pekin Singer's policies and procedures and code of ethics between 2009 and 2011 that were not detected until the compliance consultant and the SEC exam staff examined Pekin Singer's compliance program. These violations included, among other things:

- A Pekin Singer research analyst failed to pre-clear and report certain of his securities transactions and holdings, some of which were also owned by Pekin Singer clients and Appleseed, and Pekin Singer lacked documentation supporting preclearance of trades for other Pekin Singer employees;

- Pekin Singer did not receive all required documentation of all employee trading and employee personal account statements;

- Pekin Singer failed to maintain documentation of the firm's best execution reviews;

- Pekin Singer failed to obtain annual securities holdings reports and annual Code of Ethics compliance certifications from certain of its employees as required by the firm's Code of Ethics; and

- Pekin Singer failed to conduct regular reviews of the firm's Code of Ethics and failed to conduct annual compliance meetings for firm personnel, as required by Pekin Singer's policies and procedures manual.

Pekin Singer's Misleading Disclosures in its Form ADV

27. Pekin Singer's Forms ADV Part 2A that were in effect during 2011 and 2012 contained a disclosure describing the firm's Code of Ethics. The disclosure described, among other things, that certain of its employees were required to submit initial and annual securities holdings reports, and that such employees were prohibited from trading securities prior to transactions for advisory accounts. The disclosure also stated that the firm required delivery to and acknowledgement of the Code of Ethics by each supervised person at the firm. This disclosure appeared in Pekin Singer's Form ADV Part 2A filed with the Commission on March 28, 2011, December 14, 2011, January 27, 2012, and March 27, 2012. R. Strauss signed Pekin Singer's Form ADV filings during this period.

28. As described above, however, certain requirements and prohibitions in the Code of Ethics were not being enforced by Pekin Singer during this period. For example, certain Pekin Singer employees failed to comply with personal trading restrictions in the Code of Ethics, including the requirement to preclear trades, and, in the case of one employee, the prohibition on trading prior to advisory clients. Moreover, Pekin Singer had not collected from employees required securities holdings reports from 2009 until June 2011, and had not collected from employees Code of Ethics acknowledgements from 2009 until 2012.

29. The Code of Ethics disclosure in the aforementioned Forms ADV Part 2A filed in 2011 and 2012 made no mention of Pekin Singer's failure to enforce certain provisions in its Code of Ethics, or that several of the requirements and prohibitions explicitly described in the Form ADV Part 2A were not being followed.

Pekin Singer's Failure to Convert Clients to Appleseed's Institutional Share Class

Appleseed Share Class Background

30. During the Commission's investigation into Pekin Singer's compliance program failures, the firm self-reported to the Commission staff an issue relating to Pekin Singer's investment of SMA clients in the investor share class of Appleseed, despite their eligibility for conversion or placement in Appleseed's institutional share class at a lower cost to the client.

31. When Pekin Singer launched Appleseed in December 2006, Appleseed had only one share class with a 0.90% expense ratio. At the outset, Pekin Singer earned a 1.00% management fee for serving as investment adviser to Appleseed, but pursuant to an agreement with Appleseed, Pekin Singer waived part of its management fee to ensure that the total fund expense ratio for the investor (excluding certain expenses) would be capped at 0.90%. Upon the expense cap agreement's expiration in February 2009, UST's board of trustees approved a new expense cap agreement with Pekin Singer at a higher ratio of 1.24%, which increased Pekin Singer's gross revenues from managing Appleseed. Pekin Singer justified the increase as necessary to compensate Pekin Singer for new fees it was incurring on behalf of Appleseed to make Appleseed available on broker-dealers' no-transaction-fee ("NTF") fund platforms.[1]

32. Pekin Singer has invested its SMA clients in Appleseed since the fund's launch in 2006. Since Appleseed's inception, Pekin Singer has excluded client assets invested in Appleseed from total client assets under management for calculating its investment advisory fee so as not to double-charge clients on those assets. Pekin Singer's management team determined that the Appleseed management fee alone was sufficient compensation for the services Pekin Singer provided to its clients on these assets. Under this arrangement, if Pekin Singer managed $1 million in assets for a client, and invested $100,000 of the client's assets in Appleseed, Pekin Singer would only charge the client an advisory fee on $900,000 in assets, and would receive the fund management fee on the $100,000 invested in Appleseed.

[1] Many broker-dealers that offer access to mutual funds for their customers charge platform fees to the mutual fund based on the value of the fund holdings invested through the broker-dealer. It is common that broker-dealers will offer mutual funds on either an NTF basis, meaning customers do not pay transaction charges when they purchase and redeem shares, or on a transaction-fee basis ("TF"), where customers pay a transaction fee for each purchase and redemption in the fund. If a mutual fund is offered on an NTF basis, the broker-dealer will typically charge a higher platform fee to account for the lost commission revenue. Pekin Singer paid these platform fees on behalf of Appleseed.

33. In January 2011, J. Strauss, W. Pekin, and Pekin Singer developed and launched a new institutional share class for Appleseed ("APPIX"), while retaining the original share class as the investor share class ("APPLX"). As shown below, Appleseed's two share classes had different expense ratios and minimum investments:

	Investor Class (APPLX)	Institutional Class (APPIX)
Expense Ratio	1.24%	0.99%
Investment Minimum	$2,500	$100,000

34. The expense ratio differential between the two share classes was comprised of a 25 basis point administrative services fee. Appleseed paid to Pekin Singer an administrative services fee to compensate for Pekin Singer's payment of platform fees to broker-dealers that provide administrative services to APPLX shareholders. As a general matter, APPLX was offered through broker-dealers' NTF platforms, while APPIX was typically offered on TF platforms. As a result, in many cases Pekin Singer paid higher platform fees for APPLX than APPIX, and the administrative services fee was designed to compensate for some of those additional costs.[2]

35. Pekin Singer wanted to expand APPIX's reach to both large institutional investors and investment advisers with SMA clients. From the outset of the launch of APPIX, Pekin Singer's management team decided to allow investment advisers to aggregate their clients' investments to qualify for purchase of APPIX. Thus, as long as an adviser had a total of $100,000 of client assets invested in Appleseed, all investments by the adviser's clients, regardless of size, were eligible for APPIX.

Pekin Singer Failed to Convert Its SMA Clients to APPIX

36. The ability to aggregate by adviser also meant that Pekin Singer's SMA clients were eligible for the institutional share class when it became available through Pekin Singer's primary broker-dealer in April 2011. Prior to April 2011, APPLX was the only share class available to Pekin Singer's SMA clients. In aggregate, Pekin Singer's SMA clients had approximately $29 million invested in Appleseed at the time APPIX was launched, which exceeded the required $100,000 minimum for APPIX.

[2] As an example, one broker-dealer charged a platform fee of 40 basis points for APPLX shares offered through its NTF mutual fund platform, and charged 10 basis points for APPIX shares offered through its TF platform. The 25 basis point administrative services fee helped offset the additional 30 basis point cost to Pekin Singer associated with the APPLX shares.

37. Since APPIX was launched, nearly all of Pekin Singer's SMA clients traded through Broker-Dealer A. APPLIX and APPIX were available to Pekin Singer's SMA clients through Broker-Dealer A on the following terms:

	APPLX	APPIX
Expense Ratio Paid by Client	1.24%	0.99%
Transaction Fees Paid by Client	$12.50/trade	$12.50/trade
Platform Fee Charged to Pekin Singer	$16 annual fee per account	$16 annual fee per account

38. Effective April 2011, Pekin Singer's SMA clients were eligible to convert their APPLX shares to APPIX through Broker-Dealer A. If they converted, these clients would receive the identical investment with the same transaction costs, at a 0.25% lower expense ratio.

39. While converting to APPIX would save money for its clients, Pekin Singer stood to lose revenue in an amount equal to its clients' savings, as the 0.25% expense ratio differential between the two classes consisted of the administrative service fee payable to Pekin Singer. Because Pekin Singer paid a $16 fee to Broker-Dealer A per account regardless of the share class, there was no additional cost to Pekin Singer for investing its clients in APPLX instead of APPIX. In other words, by keeping its clients in APPLX, Pekin Singer could collect the administrative services fee without incurring any additional platform costs.

40. In early 2011, Pekin Singer, W. Pekin, and J. Strauss decided to not convert its SMA clients at Broker-Dealer A to APPIX. They made that decision because converting would have resulted in a reduction in fee revenue for Pekin Singer, and they viewed the fees collected from their clients through Appleseed as comparable to a negotiable investment advisory fee. They did not believe they were required to convert their clients' Appleseed holdings into the lower fee share class. However, the additional administrative services fee earned by keeping clients in APPLX was designed to compensate Pekin Singer for fees it paid to platforms for administrative services provided to Appleseed investors, not to serve as a higher advisory fee.

41. Pekin Singer also had a smaller number of clients that traded through Broker-Dealer B. Broker-Dealer B charged Pekin Singer 40 basis points for APPLX shares offered on its NTF platform, and 10 basis points for APPIX shares offered on its TF platform. In this case, while converting to APPIX reduced Pekin Singer's revenue by 25 basis points, it reduced the platform fees paid by Pekin Singer by 30 basis points, for a net gain of 5 basis points. Pekin Singer converted most of its clients that used Broker-Dealer B to APPIX when APPIX became available at Broker-Dealer B in March 2011.

42. From April 2011 until February 2014, Pekin Singer, W. Pekin, and J. Strauss placed their clients' new Appleseed investments through Broker-Dealer A in APPLX instead of APPIX, even though clients were eligible to own lower-cost APPIX. By doing so, they failed to seek best execution for their clients on these transactions.

43. From 2011 through June 2014, Pekin Singer clients paid – and Pekin Singer profited by – an additional $307,241.54, as a result of being invested in APPLX instead of APPIX.

Pekin Singer's Consultation With Counsel Regarding the Need to Convert Clients to APPIX

44. In or about January 2012, a portfolio manager at Pekin Singer questioned whether Pekin Singer needed to convert its clients to APPIX. In response, Pekin Singer's management team determined that they should consult counsel regarding the firm's decision not to convert all of its clients trading through Broker-Dealer A to APPIX. In early 2012, Pekin Singer consulted with an attorney with Investment Company Act experience who was assisting the firm with other unrelated matters. However, due to a miscommunication between Pekin Singer's management team and Investment Company Act counsel, the advice given did not appropriately address the share class issue.

Pekin Singer's Failure to Adequately Disclose Conflicts of Interest and Failure to Seek Best Execution

45. Pekin Singer, W. Pekin, and J. Strauss did not adequately disclose to their clients at Broker-Dealer A that they were eligible to invest in APPIX. Pekin Singer converted the shares of clients who requested APPIX, but did not make similar recommendations to the clients that did not proactively ask about APPIX.

46. Pekin Singer, W. Pekin, and J. Strauss did not adequately disclose to their clients that they were not seeking best execution with respect to new investments in Appleseed, or that they had a conflict of interest in selecting the investor share class for their clients. Likewise, Pekin Singer's Form ADV did not address that Pekin Singer kept or placed its clients in a more expensive share class when a less expensive share class was available. Specifically, Pekin Singer's Forms ADV Part 2A filed with the Commission on December 14, 2011, January 27, 2012, March 27, 2012, December 14, 2012, March 28, 2013, March 28, 2014, and April 29, 2014 discussed Pekin Singer's duty to seek best execution, but failed to adequately disclose Pekin Singer's failure to seek best execution in the case of selecting Appleseed share classes.

Subsequent Developments at Pekin Singer

47. Since 2011, Pekin Singer has made several changes to improve its compliance policies and procedures, and has conducted more extensive compliance testing. In 2012, the firm hired a full-time compliance employee to assist the Chief Compliance Officer, and the firm expanded its relationship with a compliance consultant as an outside resource. The firm also has outside counsel which it regularly consults with on issues requiring regulatory input. Over time, the Chief Compliance Officer's other responsibilities were pared back so that he could focus exclusively on his responsibilities as CCO and CFO. In April 2014, the Chief Compliance Officer stepped down as CCO and remains at the firm as CFO. Pekin Singer hired a new CCO with compliance and operations experience.

48. In June 2014, R. Strauss retired as the firm's President and portfolio manager. He remains at the firm as a senior adviser and board member.

Violations

49. As a result of the conduct described above in paragraphs 12 to 31, Pekin Singer willfully violated Section 204A of the Advisers Act and Rule 204A-1 thereunder, which require registered investment advisers to "establish, maintain, and enforce a written code of ethics."[3]

50. As a result of the conduct described above in paragraphs 12 to 31, Pekin Singer willfully violated 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which, among other things, requires that an investment adviser: (1) adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser or its supervised persons, of the Advisers Act and the rules adopted thereunder; and (2) review, no less frequently than annually, the adequacy of its policies and procedures and the effectiveness of their implementation. A violation of Section 206(4) and the rules thereunder do not require scienter. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

51. As a result of the conduct described above in paragraphs 12 to 31 and 32 to 46, Pekin Singer willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

52. As a result of the conduct described above in paragraphs 12 to 31, R. Strauss willfully violated Section 207 of the Advisers Act and caused Pekin Singer's violations of Sections 204A and 206(4) of the Advisers Act and Rules 204A-1 and 206(4)-7 thereunder.

53. As a result of the conduct described above in paragraphs 32 to 46, Pekin Singer willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for an adviser to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client. Proof of scienter is not required for a violation of Section 206(2) of the Advisers Act. "[A] violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence." *Steadman*, 967 F.2d at 643 n.5 (citing SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191 (1963)).

54. As a result of the conduct described above in paragraphs 32 to 46, W. Pekin and J. Strauss caused Pekin Singer's violations of Sections 206(2) and 207 of the Advisers Act, and willfully caused to be omitted in reports required to be filed with the Commission under the Advisers Act material facts required to be stated therein.

[3] A willful violation of the securities laws means merely "'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.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Pekin Singer's Remedial Efforts

55. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Pekin Singer and cooperation afforded to the Commission staff:

- In 2011, Pekin Singer retained an Investment Company Act securities counsel to advise the firm on certain regulatory matters.

- In 2012, Pekin Singer expanded its relationship with its outside compliance consultant and hired an additional full-time Compliance Director to support the firm's CCO. Pekin Singer has continued to retain a compliance consultant as an additional compliance resource.

- In 2014, Pekin Singer hired a new CCO who has been tasked with continuing to expand and improve the firm's compliance program.

- In 2014, Pekin Singer continued its relationship with its outside compliance consultant to ensure that the consultant will monitor and advise on Pekin Singer's annual compliance program reviews for the year ended 2014. Pekin Singer will retain a consultant for monitoring and advising through at least 2015.

56. The Commission also considered that Pekin Singer detected the Appleseed Fund share class issue and voluntarily self-reported it to Commission staff during the Commission's investigation into the other compliance issues at Pekin Singer. Pekin Singer voluntarily took remedial actions, including retaining separate outside legal counsel to conduct an investigation of the facts surrounding the Appleseed Fund share class issue and share the findings of its investigation with Commission staff. At the conclusion of the investigation, Pekin Singer voluntarily reimbursed all affected client accounts for the excess fees and costs incurred by client accounts holding investor class shares, as well as the implied return these monies would have earned in the institutional share class over the applicable time period. The reimbursement totaled $360,680.75, which included $307,241.54 of additional fees paid by clients in APPLX and $53,439.21 of foregone investment return resulting from the higher fees.

Undertakings

57. Respondent R. Strauss has undertaken to provide to the Commission, within sixty (60) days after the end of the twelve-month suspension period described in Section IV, an affidavit that he has complied fully with the sanctions described in Section IV below.

IV.

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

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Pekin Singer cease and desist from committing or causing any violations and any future violations of Sections 204A, 206(2), 206(4) and 207 of the Advisers Act and Rules 204A-1 and 206(4)-7 promulgated thereunder.

B. R. Strauss cease and desist from committing or causing any violations and any future violations of Sections 204A, 206(4), and 207 of the Advisers Act and Rules 204A-1 and 206(4)-7 promulgated thereunder.

C. W. Pekin and J. Strauss cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 207 of the Advisers Act.

D. R. Strauss be, and hereby is, suspended for 12 months, effective on the second Monday following the entry of this Order, from association in a compliance capacity and a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and is suspended from association in a compliance capacity and a supervisory capacity with any registered investment company, or with any investment adviser or depositor of, or principal underwriter for, a registered investment company.

E. Pekin Singer, W. Pekin, and J. Strauss are censured.

F. Pekin Singer shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $150,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in the manner provided in Subsection J below.

G. R. Strauss shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $45,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in the manner provided in Subsection J below.

H. W. Pekin shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $45,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in the manner provided in Subsection J below.

I. J. Strauss shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $45,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3).

If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in the manner provided in Subsection J below.

J. Payment of any amount herein must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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) Respondents 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 the respective Respondent making the payment (either Pekin Singer, R. Strauss, W. Pekin and/or J. Strauss) 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 Paul A. Montoya, Assistant Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Boulevard, Chicago, Illinois, 60604, or such other address the Commission staff may provide.

K. Respondent R. Strauss shall comply with the undertakings enumerated in Section III.57. above.

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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75290; File No. SR-OCC-2014-810)

June 24, 2015

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to an Advance Notice Concerning Modifications to Backtesting Procedures in Order to Enhance Monitoring of Margin Coverage and Model Risk Exposure

On November 13, 2014, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") advance notice SR-OCC-2014-810 ("Advance Notice") pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 ("Payment, Clearing and Settlement Supervision Act")[1] and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Exchange Act") to modify backtesting procedures to better identify and make improvements to its monitoring of its margin methodology and to enhance its ability to manage risk.[2] The Advance Notice was published for comment in the Federal Register on December 11, 2014.[3] On January 9, 2015, pursuant to section 806(e)(1)(D) of the Payment, Clearing and Settlement Supervision Act,[4] the Commission required OCC to provide additional

1 12 U.S.C. 5465(e)(1). The Financial Stability Oversight Council designated OCC a systemically important financial market utility on July 18, 2012. See Financial Stability Oversight Council 2012 Annual Report, Appendix A, http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf. Therefore, OCC is required to comply with the Clearing Supervision Act and file advance notices with the Commission. See 12 U.S.C. 5465(e).

2 17 CFR 240.19b-4(n)(1)(i).

3 See Securities Exchange Act Release No. 73749 (December 5, 2014), 79 FR 73673 (December 11, 2014) (SR-OCC-2014-810)("Notice").

4 12 U.S.C. 5465(e)(1)(D).

information concerning the Advance Notice.[5] The Commission did not receive any comments on the Advance Notice. This publication serves as a notice of no objection to the Advance Notice.

I. Description of the Advance Notice

As described in OCC's Notice,[6] the proposed change modifies OCC's backtesting procedures to enhance its monitoring of margin coverage and model risk exposure. Such monitoring will allow OCC to better identify and make improvements to its margin methodology and thus enhance OCC's ability to manage risk.[7]

OCC implements backtesting procedures to test its methodology for determining the amount of margin to collect from clearing members and validate the assumptions and mechanisms inherent in its methodology and to make any necessary changes to the methodology. Each trading day, OCC estimates the risk exposure of accounts and uses this estimate as a basis for each account's margin charge. On the following business day, OCC's current backtesting procedures compare an account's observed profit and loss ("P&L") with the prior day's estimated risk using a variety of analytical and statistical tools. These daily tests measure the performance of OCC's risk measures for each account, and, therefore, also measure the performance of OCC's underlying margin methodology. OCC's backtesting program enables OCC to assess performance of its

5 The Commission received a response from OCC with the additional information for consideration on April 29, 2015, which, pursuant to Sections 806(e)(1)(E) and (G) of the Payment, Clearing and Settlement Supervision Act, initiated a new 60 day period of review. See 12 U.S.C. 5465(e)(1)(E) and 12 U.S.C. 5465(e)(1)(G).

6 See supra note 3.

7 If OCC determines that the results of these modified backtesting procedures require changes to its margin model, OCC may be required to file an advance notice to effect those changes. See id.

margining systems and determine whether financial risks are adequately or inadequately captured by the quantitative models in use.

OCC has conducted daily backtesting of margin accounts since 2006. OCC employs the "traffic light" test published by the Basel Committee on Banking Supervision in 1996 (the "Traffic Light Test").[8] In conducting the Traffic Light Test, OCC determines the actual number of instances in which the realized loss on an account exceeded the margin, referred to as an "exceedance," over an observation period of one year. The number of exceedances during the observation period is compared against the number of expected exceedances under the assumption that the exceedances are independent and identically distributed over time. When backtesting results reveal the potential opportunity for remediation of OCC's margin methodology, OCC undertakes a root cause analysis to determine the cause of any issues. Any significant shortcomings of OCC's methodology lead to OCC undertaking a model improvement project designed to correct the problems. After analyzing the exceedances, OCC provides monthly reports to OCC's Enterprise Risk Management Committee ("ERMC"), which include, among other things, pertinent conclusions based on results from the full set of backtests.

OCC analyzed its backtesting program and identified several enhancements to the program, as discussed in more detail below: (1) enhancement of and increase in the number of statistical tests, (2) data set changes, (3) forecast horizon changes, and (4) root cause analysis changes.

---

8 See "Supervisory Framework for the Use of 'Backtesting' in Conjunction with Internal Model Approach to Market Risk Capital Requirement." Located at http://www.bis.org/publ/bcbs22.htm

1. *Enhancement of and Increase in the Number of Statistical Tests*

As proposed in the Notice, OCC will enhance an existing statistical test and add three new statistical tests. OCC proposed to enhance its existing Traffic Light Test so that it may be applied to exceedances across all of OCC's margin accounts. Given that exceedances are not independent across margin accounts, OCC will enhance this test to address the dependency of exceedances between accounts.

In addition to the enhanced Traffic Light Test, OCC will implement three other industry standard tests related to exceedances in order to provide a more comprehensive set of tests. First, OCC will add the Kupiec Test,[9] which is a new proportion of failures test that compares the actual number of exceedances with the number that would be expected in light of the confidence level associated with the calculation of margin. For example, when calculating margin with a confidence level of 99%, the number of exceedances is expected to be 1% of the total observations (*i.e.*, the P&Ls for all accounts for all days during the measurement period). If the actual number of exceedances is near the expected number, this is an indication that the calculated margin requirements are not inaccurate estimates of the accounts' estimated losses.

Second, OCC will add the Christoffersen Independence Test,[10] which is a new statistical test that measures the extent to which exceedances are independent of each other. Specifically, if OCC's margin models are correctly assessing risk, the probability of an exceedance occurring at any two points in time should be the same as the

---

9 See, Kupiec, P. "Techniques for Verifying the Accuracy of Risk Management Models," Journal of Derivatives, v3, P73-84 (1995).

10 See, Christoffersen, Peter, "Evaluating Interval Forecasts." International Economic Review, 39 (4), 841-862 (1998).

probability of an exceedance occurring at either point in time, individually, without the exceedance occurring at the other point in time. Third, OCC will add the Probtile test, which compares the distribution of the daily observed P&L to the daily forecasted P&L distribution. If the distribution of these P&L ratios approximates a uniform random distribution, this is an indication that OCC's margin models are not providing inaccurate forecasts of potential losses in an account. Combined, these new statistical tests will provide OCC with additional pertinent information to evaluate the effectiveness of its models in determining margin coverage.

2. *Data Set Changes*

In addition to the changes to its backtesting program, as described above, OCC also will make two enhancements to the data sets being backtested to allow for testing against various assumed portfolio and market data scenarios, in addition to the performance of actual portfolios against actual, current market conditions. First, OCC will backtest hypothetical portfolios, allowing for the design and monitoring of portfolios that have magnified sensitivities to particular aspects of the models used in the margin computations. Backtesting against hypothetical portfolios will provide a more comprehensive insight into the adequacy of the underlying model assumptions under market conditions prevailing in the backtest observation periods.

Under the second data set enhancement, OCC will backtest current accounts against earlier observation periods. The market data observed over the observation period is used to generate the margin forecasts and P&L and observation periods will be chosen to reflect special market conditions. OCC believes this enhancement should be useful because even though margin coverage might be adequate in the current environment, margin coverage could be inadequate under stressed conditions, such as periods of high volatility. The ability to select specific observation periods will not limit the backtesting to the current environments but rather will highlight performance of margin coverage and model performance in market scenarios other than prevailing market conditions.

3. *Forecast Horizons Changes*

Currently, OCC conducts backtesting using a one-day time horizon, which means that it compares calculated margin with realized P&Lthat occur on the business day following the calculation. However, OCC's margin calculations assume that positions will be liquidated over a two-day period, resulting in the test comparing two-day margin numbers to a one-day P&L calculation. This difference requires OCC to make adjustments to its existing backtesting methodology in its testing to account for the difference between the two-day liquidation period used in its margin calculation and the one-day horizon used in the P&L calculation.

Pursuant to the proposal, OCC will revise its backtesting methodology to take into account losses over a two-day time horizon, which will match the two-day liquidation period used in the margin calculation without such adjustments. OCC will implement the necessary functionality into its backtesting system to conduct a two-day time horizon backtest, which will compare calculated margin against a two-day P&L calculation. OCC also will revise its backtesting methodology to compare one-day margin calculations against one-day P&L calculations, and will implement system functionality for such a test. All issues identified in any of these backtesting results will be reported to the ERMC. OCC believes that its adoption of the additional forecast horizons tests will allow it to have a more accurate view of the sufficiency of its margin methodology.

4. *Root Cause Analysis Changes*

Currently, OCC's backtesting staff conducts investigations, as necessary, in order to identify the root cause of exceedances. The investigation itself is a manual process that is dependent upon the facts and circumstances pertaining to a given exceedance. Pursuant to its proposal, OCC will now make system modifications that will provide OCC's backtesting staff with additional tools to facilitate such investigations. Specifically, OCC will add system functionality that should reveal attribution of losses due to underlying price movements and implied volatility movements. Further, these improvements will allow OCC to incorporate hypothetical accounts and positions into the tests and will allow OCC to identify risk factors that move above or below the projected values. These changes should improve OCC's ability to conduct investigations and root cause analyses that identify the root cause of exceedances by providing OCC with additional automated investigative tools which should, in turn, lead to improving OCC's backtesting methodology and its margin coverage.

II. Discussion and Commission Findings

Although Title VIII does not specify a standard of review for an advance notice, the Commission believes that the stated purpose of Title VIII is instructive.[11] The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically-important financial market utilities and strengthening the liquidity of

---

11 See 12 U.S.C. 5461(b).

systemically important financial market utilities.[12]

Section 805(a)(2) of the Payment, Clearing and Settlement Supervision Act[13] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Payment, Clearing and Settlement Supervision Act[14] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Payment, Clearing and Settlement Supervision Act ("Clearing Agency Standards").[15] The Clearing Agency Standards became effective on January 2, 2013, and require registered clearing agencies that perform central counterparty ("CCP") services to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk

---

12 Id.

13 12 U.S.C. 5464(a)(2).

14 12 U.S.C. 5464(b).

15 17 CFR 240.17Ad-22.

management practices on an ongoing basis.[16] As such, it is appropriate for the Commission to review advance notices against these Clearing Agency Standards, and the objectives and principles of these risk management standards as described in Section 805(b) of the Payment, Clearing and Settlement Supervision Act.[17]

The Commission believes that the proposal in this Advance Notice is designed to further the objectives and principles of Section 805(b) of the Payment, Clearing and Settlement Supervision Act.[18] The Commission believes that the additional backtesting improvements should promote robust risk management by providing OCC with additional tools to test the performance of its margin methodology in a more comprehensive manner and better evaluate the effectiveness of its models in determining model coverage. First, the enhancement to OCC's existing Traffic Light Test and the adoption of the three new statistical tests should provide a more comprehensive set of tests for it to use to evaluate its margin models. Second, the enhancement of the data sets to be backtested should provide OCC with additional informative data on the performance of margin coverage and model performance in market scenarios other than prevailing market conditions. Third, revising the backtesting methodology to take into account losses over a two-day time horizon, should allow OCC to have a more accurate

---

16 The Clearing Agency Standards are substantially similar to the risk management standards established by the Board of Governors of the Federal Reserve System governing the operations of designated financial market utilities that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. See Financial Market Utilities, 77 FR 45907 (August 2, 2012).

17 12 U.S.C. 5464(b).

18 12 U.S.C 5464(b).

view of the sufficiency of its margin methodology. Finally, system modifications that should reveal attribution of losses due to underlying price movements and implied volatility movements should provide OCC with additional, automated investigative tools to conduct analysis into the root causes of exceedances.

In addition, the Commission believes that the proposal in this Advance Notice is consistent with Clearing Agency Standards, in particular, Rule 17Ad-22(b)(4) under the Exchange Act,[19] which, in relevant part, requires registered clearing agencies that perform central counterparty services establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models. The Commission believes that this proposal is consistent with Exchange Act Rule 17Ad-22(b)(4)[20] because it provides OCC with the ability to employ improved statistical tests to better evaluate the performance of its margin models and thus improving its ability to validate such models.

---

[19] 17 CFR 240.17Ad-22(b)(3).

[20] Id.

III. Conclusion

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Payment, Clearing and Settlement Supervision Act,[21] that the Commission DOES NOT OBJECT to advance notice proposal (SR-OCC-2014-810) and that OCC is AUTHORIZED to implement the proposal.

By the Commission.

Robert W. Errett
Deputy Secretary

21 12 U.S.C. 5465(e)(1)(I).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75285 / June 24, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16651

In the Matter of **Papertradex (US) Inc., and** **Park Hill Capital I Corp.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Papertradex (US) Inc. and Park Hill Capital I Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Papertradex (US) Inc. (CIK No. 1375267) is a revoked Nevada corporation located in London, England with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Papertradex (US) Inc. is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2007, which reported a net loss of $867,777 from the company's August 28, 2003 inception to June 30, 2007. Moreover, the company has never filed a Form 10-KSB.

2. Park Hill Capital I Corp. (CIK No. 1097638) is a revoked Nevada corporation located in Montreal, Quebec, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Park Hill Capital I Corp. is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended May 31, 2005, which reported a net loss of $68,590 from the company's March 2, 1999 inception to May 31, 2005.

B. DELINQUENT PERIODIC FILINGS

3. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

4. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

5. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75279 / June 24, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16650

In the Matter of **China SLP Filtration Technology, Inc., Sickbay Health Media, Inc., and SoTech, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents China SLP Filtration Technology, Inc., Sickbay Health Media, Inc., and SoTech, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. China SLP Filtration Technology, Inc. (CIK No. 1423023) is a void Delaware corporation located in Foshan City, Guangdong Province, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China SLP Filtration Technology, Inc. is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of $372,108 for the prior three months.

2. Sickbay Health Media, Inc. (CIK No. 1012464) is an expired Utah corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Sickbay Health Media, Inc. is

delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a 10-QSB for the period ended September 30, 2001, which reported a net loss of $1,857,457 for the prior nine months. As of February 23, 2015, the company's stock (symbol "SKBY") was traded on the over-the-counter markets.

3. SoTech, Inc. (CIK No. 1345906) is a Georgia corporation located in Syracuse, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SoTech, Inc. is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a 10-Q for the period ended September 30, 2009, which reported a net loss of $51,662 from the company's September 8, 2003 inception to September 30, 2009. On August 19, 2013 the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Alabama, and the case was closed on June 24, 2014.

B. DELINQUENT PERIODIC FILINGS

4. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

5. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

6. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75292 / June 24, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4128 / June 24, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16489

In the Matter of **LARRY DEARMAN SR.,** **Respondent.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 15(b)(6) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940**

I.

On April 13, 2015, the Securities and Exchange Commission ("Commission") instituted proceedings pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 against Respondent Larry Dearman, Sr. ("Respondent" or "Dearman").

II.

Respondent has submitted an Offer of Settlement ("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, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, as set forth below.

III.

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

A. **Respondent**

1. **Larry Dearman, Sr.**, of Bartlesville, Oklahoma, was an investment-adviser representative, partner, and partial owner of Commission-registered investment adviser The Focus Group from November 1, 2003, until August 24, 2012, when each of these roles was terminated by The Focus Group. From February 2010 to May 2012, Dearman, who held Series 7 and 66 licenses, was associated with then SEC-registered broker-dealer, Cambridge Legacy Securities, L.L.C., which was expelled from FINRA and had its SEC registration terminated in June 2012. From January 2009 to February 2010, Dearman was associated with SEC-registered broker-dealer Securities America, Inc., and prior to that, from February 2005 to January 2009, with SEC-registered broker-dealer Brecek & Young Advisors, Inc., which was subsequently acquired by Securities America. From February 2002 through February 2005, Dearman was associated with AXA Advisors. Dearman has no prior disciplinary history.

Respondent participated in an offering of The Property Shoppe, Inc. stock, which was a penny stock.

B. **Entry of civil injunction and Respondent's criminal conviction**

2. On January 28, 2015, a final judgment was entered against Dearman, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Larry J. Dearman, Sr., et al., Civil Action Number 4:13-CV-00553, in the United States District Court for the Northern District of Oklahoma. The Final Judgment ordered that Dearman is jointly and severally liable with his co-Defendant Marya Gray for disgorgement of $4,261,449.40, plus $311,328.90 in prejudgment interest, and ordered Dearman individually to pay a civil penalty of $100,000.

3. The complaint alleged that, from approximately December 2008 through August 2012, Tulsa-resident Dearman, an investment adviser then working in Bartlesville, Oklahoma, at the direction of his friend Marya Gray, raised at least $4.7 million through various illegal schemes from more than 30 of Dearman's advisory clients. Dearman promised his clients that he would invest their money in entities owned or controlled by Gray, including Bartnet Wireless Internet, Inc., The Property Shoppe, Inc., and Quench Buds Holding Company, LLC. Instead, Dearman and Gray squandered the vast majority of those funds in gambling, personal expenses, and Ponzi payments. In addition, Dearman also stole roughly $700,000 from some of his clients through various ruses.

4. In 2013, Dearman was charged in a criminal information by the Washington County District Attorney, in Bartlesville, Oklahoma, with 10 counts of embezzlement, obtaining money by false pretense, and conspiracy, based on the same or similar actions as alleged in the civil complaint and covering substantially the same time period. Dearman pleaded guilty to the

criminal information, and on August 12, 2014, was sentenced to ten years in Oklahoma Department of Corrections.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), that Respondent Dearman 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; and

Pursuant to Section 15(b)(6) of the Exchange Act, Respondent Dearman be, and hereby is 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.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75298 / June 25, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4130 / June 25, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3665 / June 25, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16652

In the Matter of

MICHAEL S. WILSON, CPA and COTTERMAN-WILSON CPAs, INC.,

Respondents.

ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 4C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Michael S. Wilson, CPA ("Wilson") and Cotterman-Wilson CPAs, Inc. (the "Firm") (collectively, "Respondents") pursuant to Section 4C[1] of the Securities Exchange Act of 1934 ("Exchange Act"), Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.[2]

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 Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934, Section 203(k) of the Investment Advisers Act of 1940, and Rule 102(e) of the Commission's Rules of Practice, 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[3] that:

SUMMARY

1. This proceeding arises out of Respondents' failure to complete surprise examinations pursuant to Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder (the

---

[1] Section 4C provides, in relevant part, that:
The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to . . . have engaged in . . . improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

[2] Rule 102(e)(1)(ii) provides, in pertinent part, that:
The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in . . . improper professional conduct.

[3] 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.

"Custody Rule") in 2009, 2010, and 2011.[4] Professional Investment Management, Inc. ("PIM"), a registered investment adviser, had custody of client assets held in three omnibus accounts at all relevant times and was required by the Custody Rule to engage an independent public accountant to conduct annual surprise examinations to verify those assets. PIM engaged the Firm to perform these required annual surprise examinations from 1999 to 2011. Respondents completed the surprise examinations on an annual basis from 1999 to 2008. However, Respondents failed to complete the surprise examinations (*i.e.*, conduct fieldwork, prepare and issue a surprise examination report, and file Form ADV-E with the Commission) or withdraw from the surprise examinations in 2009, 2010, and 2011, and, thus, caused PIM to violate the Prior Custody Rule or the Custody Rule, as applicable, for each of those years. In addition, Wilson engaged in improper professional conduct, within the meaning of Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice, in connection with the surprise examinations from 2009 through 2011.

RESPONDENTS

2. **Michael S. Wilson**, age 61, has been a certified public accountant ("CPA") licensed by the Ohio Board of Accountancy since June 9, 1980. Wilson is a 50% shareholder of the Firm, and, at all times relevant to this proceeding, was the engagement partner for the services that the Firm performed for PIM, which included, as relevant to this proceeding, annual surprise examinations required by the Prior Custody Rule and the Custody Rule. Wilson has never been subjected to any disciplinary or regulatory proceedings.

3. **Cotterman-Wilson CPAs, Inc.** is a Columbus, Ohio-based accounting firm established in 1997 that has five full-time employees: two CPAs who each are 50% shareholders of the Firm, a CPA who is not a shareholder of the Firm, and two administrative personnel. The Firm primarily provides accounting and tax services to individuals and private entities. The Firm has never been registered with the Public Company Accounting Oversight Board, and has never been subjected to any disciplinary or regulatory proceedings.

OTHER RELEVANT ENTITIES

4. **Professional Investment Management, Inc.** is an Ohio corporation with its principal place of business in Columbus, Ohio. At all times relevant to this proceeding, PIM was

[4] On December 30, 2009, the Commission adopted amendments to the Custody Rule, which became effective March 12, 2010. *See Custody of Funds or Securities of Clients by Investment Advisers*, Release No. IA-2968 (Dec. 30, 2009). Respondents' conduct in 2009 was governed by the Custody Rule in effect before the December 30, 2009 amendments (the "Prior Custody Rule"). *See Custody of Funds or Securities of Clients by Investment Advisers*, Release No. IA-2176 (Sept. 25, 2003). The significant differences between the Custody Rule and the Prior Custody Rule, as relevant to this specific proceeding, are described below in Paragraph 11.

owned by Douglas E. Cowgill ("Cowgill"), Owner A, and Owner B. PIM was registered with the Commission as an investment adviser from 1978 through September 30, 2013, and from June 24, 2014 to today. PIM provides third-party administration services and investment advisory services to approximately fifteen retirement plan clients (which consist of approximately 325 participants who, in turn, own approximately 425 individual retirement accounts that PIM advises), and also provides investment advisory services to approximately twenty-five individual clients for their own (non-retirement plan) accounts. PIM has approximately $120 million of regulatory assets under management, and has custody of client assets through three omnibus accounts. PIM is the only SEC registrant that the Firm or Wilson has ever had as a client.

FACTS

5. The Commission filed suit against Cowgill and PIM in the United States District Court for the Southern District of Ohio on April 29, 2014 alleging that Cowgill and PIM violated the antifraud provisions of the U.S. securities laws, and that PIM violated, and Cowgill aided and abetted and caused PIM's violations of, the registration provisions of the Advisers Act, the Prior Custody Rule, and the Custody Rule. The Commission filed an Amended Complaint on August 7, 2014 that included additional counts against Cowgill and PIM, and the Court entered a Judgment by Consent against Cowgill on August 21, 2014 as to all counts asserted in the Amended Complaint. The Commission alleged that PIM and Cowgill hid a shortfall of more than $700,000 in client assets by sending false account statements to clients.

6. At all relevant times, PIM maintained client funds in an omnibus checking account held on an agency basis at Custodian 1, and client securities in two omnibus accounts held on an agency basis at Custodian 2 and Custodian 3. All client funds were initially deposited into the omnibus checking account held at Custodian 1, and then were transferred for investment to various firms, including Custodians 2 and 3.

7. PIM maintained records for the omnibus accounts held at Custodians 1, 2, and 3 on a client level (*i.e.*, PIM kept track of the assets in these accounts on a client-by-client basis), and sent directly to its clients periodic (typically quarterly) account statements that it generated based upon its own internal records.

8. However, neither Custodian 1, Custodian 2, nor Custodian 3 maintained records for the omnibus accounts on a client level (indeed, none of these custodians was privy to PIM's client information), and neither Custodian 1, Custodian 2, nor Custodian 3 sent quarterly account statements to any of PIM's clients.

9. The Custody Rule requires, and the Prior Custody Rule required, registered investment advisers with custody of client funds or securities, like PIM, to implement certain controls designed to protect those client assets from loss, misappropriation, misuse, or the adviser's insolvency.

10. Specifically, the Prior Custody Rule required registered investment advisers to either: (i) have a reasonable basis for believing that a "qualified custodian," such as a bank or broker-dealer, was sending quarterly account statements to each of the clients for which they maintained funds or securities; *or* (ii) send the quarterly account statements themselves and obtain an annual surprise examination by an independent public accountant to verify all of the client funds and securities.

11. The Custody Rule amended the Prior Custody Rule by, among other things, requiring all registered investment advisers with custody of client funds or securities to undergo an annual surprise examination by an independent public accountant to verify all of the client funds and securities, regardless of whether such advisers had a reasonable basis for believing that a "qualified custodian," such as a bank or broker-dealer, was sending quarterly account statements to each of the clients for which they maintained funds or securities.[5]

12. PIM thus was obligated in 2009 under the Prior Custody Rule to have the client assets held in omnibus accounts at Custodians 1, 2, and 3 verified through surprise examination by an independent public accountant because none of these custodians sent quarterly account statements directly to PIM's clients (and PIM did not have a reasonable basis for believing that they did so), and also was obligated in 2010 and 2011 under the Custody Rule to have the client assets held in omnibus accounts at Custodians 1, 2, and 3 verified through surprise examination by an independent public accountant because PIM had custody of those assets.

PIM Engaged the Firm to Perform the
2009, 2010, and 2011 Surprise Examinations

13. PIM engaged the Firm to complete PIM's surprise examinations for the periods of time ending April 30, 2009 (the "2009 Exam"), April 30, 2010 (the "2010 Exam"), and May 31, 2011 (the "2011 Exam").

[5] As reflected in Rule 206(4)-2(a)(4), the Custody Rule also amended the Prior Custody Rule to require all surprise examinations be conducted pursuant to a written agreement between the adviser and the accountant that explicitly requires the accountant to: (i) file Form ADV-E with the Commission within 120 days of the time chosen by the accountant stating that it has examined the client funds and securities and describing the nature and extent of the examination; (ii) notify the Commission within one business day of its finding any material discrepancies; and (iii) file Form ADV-E within four business days of resignation or dismissal from, or other termination of the engagement, along with a statement that includes, among other things, the date of such resignation, dismissal, removal, or other termination, and an explanation of any problems that contributed to such resignation, dismissal, removal, or other termination. The Custody Rule thus established a new contractual reporting obligation for accountants regarding their resignation or dismissal from, or other termination of the engagement, and established a 120-day deadline by which surprise examinations must be completed.

14. Owner A, on behalf of PIM, engaged the Firm on or about May 28, 2009 to perform the 2009 Exam by signing a three-page letter in which the Firm represented, among other things, that:

> We will examine management's assertion, included in the Management Statement Regarding Compliance with Certain Provisions of the Investment Advisers Act of 1940 (the Act), that Professional Investment Management, Inc. (the Company) complied with certain provisions of rules 204-2(b) and 206(4)-2 of the Investment Advisers Act of 1940 as of April 30, 2009 and during the period June 1, 2008 to April 30, 2009. The Company is responsible for compliance with the requirements of the [A]ct. Our responsibility is to express an opinion on management's assertion about the Company's compliance based on our examination.
>
> Our examination will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants [("AICPA")]. . . . .[6]

15. PIM also engaged the Firm to perform the 2010 and 2011 Exams.

16. Wilson was the sole CPA on each of the 2009, 2010, and 2011 Exams, and was solely responsible for completing the planning and fieldwork, supervising the two non-CPAs who performed largely ministerial work on these exams, issuing a report or choosing to withdraw from the engagement, and ensuring that Form ADV-E was filed with the Commission for each of the years for which the Firm was engaged by PIM to perform a surprise examination.

Respondents' 2009 Exam Report Lacks Reasonable Basis

17. Respondents performed field work in connection with the 2009 Exam. Indeed, the Firm sent invoices to PIM reflecting the work it had performed, and PIM paid each of these invoices in full.

---

[6] The AICPA attestation standards applicable to surprise examinations performed pursuant to the Prior Custody Rule and the Custody Rule are set forth in AT Section 101, "Attest Engagements" and AT Section 601, "Compliance Attestation." *See, e.g., Commission Guidance Regarding Independent Public Accountant Engagements Performed Pursuant to Rule 206(4)-2 Under the Investment Advisers Act of 1940*, Release No. IA-2969 (Dec. 30, 2009). This December 30, 2009 interpretative guidance had not been published at the time that PIM engaged the Firm to perform the 2009 Exam, but was published prior to both the date that the Firm issued its report for the 2009 Exam and the dates that PIM engaged the Firm to perform the 2010 and 2011 Exams.

18. Respondents signed a final report for the 2009 Exam on or about July 27, 2010, which provides the following opinion:

> We have examined management's assertion, included in the accompanying Management Statement Regarding Compliance with Certain Provisions of the Investment Advisers Act of 1940, that [PIM] complied with certain provisions of rules 204-2(b) and 206(4)-2 of the Investment Advisers Act of 1940 as of and during the period ended April 30, 2009.
>
> * * *
>
> In our opinion, management's assertion that [PIM] complied with the requirement of subparagraphs (1) of rule 206(4)-2(a) under the Investment Advisers Act of 1940 as of April 30, 2009, and has complied with rule 204-2(b) and the requirements of subparagraphs (2) and (3) of rule 206(4)-2(a) under the Investment Advisers Act of 1940 as of and during the period from June 1, 2008 through April 30, 2009, is fairly stated, in all material respects.

19. Respondents' opinion lacks reasonable basis for two reasons:

a. First, AT Section 601.11 requires an accountant to obtain a written assertion as part of engagement performance. Respondents, however, did not obtain a management assertion upon which their opinion is purportedly based. Wilson knew that AT Section 101 requires a conclusion that a scope limitation exists if the accountant fails to obtain a written assertion, [7]and necessitates a decision to provide a qualified opinion, to disclaim an opinion, or to withdraw.[8]

b. Second, Respondents identified material variances, as of April 30, 2009, in the records of certain of PIM's client securities-holding accounts. Wilson sent a fax to Cowgill on May 12, 2010 that identified these variances and directed Cowgill to call Wilson to discuss, but Respondents' workpapers do not show that Respondents obtained evidence to explain these variances or otherwise reconcile these variances. Respondents thus lacked sufficient evidence to provide a reasonable basis for issuing a report containing an opinion that

---

[7] *See* AT Section 101.58 ("When the practitioner's client is the responsible party, a failure to obtain a written assertion should result in the practitioner concluding that a scope limitation exists.").

[8] *See* AT Section 101.73-74.

management's assertion that PIM complied with the Prior Custody Rule was fairly stated, in all material respects. *See* AT Section 101.51.

Respondents Failed To File Form ADV-E With The Commission
<u>In Connection With The 2009 Exam</u>

20. Respondents failed to file Form ADV-E with the Commission in connection with the 2009 Exam. The Prior Custody Rule obligated the adviser to require the accountant to file with the Commission Form ADV-E within 30 days of completing the surprise examination in order for the adviser to comply with the Prior Custody Rule. Respondents never filed Form ADV-E in connection with the 2009 Exam.

Respondents Failed To Complete The 2010 and 2011 Exams,
Did Not Timely Withdraw From These Engagements, and
<u>Never Filed Form ADV-E With The Commission In Connection With These Exams</u>

21. Respondents were aware at the time that PIM engaged them to perform the 2010 Exam that the Prior Custody Rule had been amended by the Custody Rule, and understood that the Custody Rule obligated the adviser to require the accountant to file Form ADV-E with the Commission within 120 days from the date that the accountant had begun the surprise examination in order for the adviser to comply with the Custody Rule.

22. Respondents had never completed a surprise examination for PIM in less than 120 days. For instance, the surprise examination reports prepared in 2005, 2006, 2007, 2008, and 2009 were prepared 391, 414, 213, 247, and 453 days after the commencement of each respective surprise examination.

23. Nevertheless, Respondents accepted the engagement for the 2010 Exam.

24. By all accounts, Respondents performed field work in connection with the 2010 Exam. PIM did not cooperate with Respondents' requests for information in connection with the 2010 Exam, but Respondents did not terminate the engagement. Instead, Respondents sent periodic invoices to PIM reflecting the work they had performed. PIM paid each of these invoices in full.

25. Sometime in 2011 Wilson informed at least one PIM owner that Respondents would be unable to complete the 2010 Exam within 120 days from the date that they had begun the 2010 Exam. In response, a PIM owner proposed that Respondents begin the 2011 Exam, complete the fieldwork that was necessary to complete both the 2010 and 2011 Exams, and then simultaneously file Form ADV-E with the Commission for the 2010 and 2011 Exams.

26. Respondents agreed to this proposal, accepted the engagement for the 2011 Exam, and began simultaneously performing field work in connection with both the 2010 and 2011 Exams.

27. PIM did not cooperate with Respondents' requests for information in connection with the 2010 and 2011 Exams, but Respondents did not terminate the engagement for either of these examinations. Instead, the Firm sent invoices to PIM reflecting the work it had performed in connection with these examinations, sending the last of such invoices to PIM on or about October 30, 2011. PIM paid each of these invoices in full.

28. Respondents never issued a report for either the 2010 or 2011 Exam, did not timely withdraw from the engagements to conduct these examinations and notify PIM of their decision to withdraw, and never filed Form ADV-E with the Commission in connection with either of these examinations. *See* AT Section 101.64 ("The practitioner who accepts an attest engagement should issue a report on the subject matter or the assertion or withdraw from the attest engagement."); AT Section 101.39 (requiring accountant to exercise "due professional care" in the planning and performance of the engagement and the preparation of the report); AT Section 601.38 (requiring accountant to exercise "due care" in planning and performing an examination engagement).

29. It was not until January 11, 2013, more than 15 months after submitting their last invoice to PIM in connection with the 2010 and 2011 Exams, that Respondents notified PIM that they did not intend to perform any additional services for PIM.

30. Months later, Owner A and Owner B asked Respondents to resume performing surprise examinations for PIM. Respondents declined this request.

<u>Respondents Caused PIM's Violations of the Custody Rule and the Prior Custody Rule</u>

31. Respondents caused PIM's violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

32. Wilson was the engagement partner for the 2009, 2010, and 2011 Exams, and was the only CPA to perform work in connection with these exams. Respondents agreed to perform the 2009, 2010, and 2011 Exams, and understood that PIM had engaged them to: (i) conduct the 2009, 2010, and 2011 Exams; (ii) verify funds and securities through actual examination; and (iii) file with the Commission Form ADV-E within the time periods required by the Prior Custody Rule and the Custody Rule.

33. With respect to the 2009 Exam, Respondents failed to:

a. obtain a reasonable basis for issuing a report containing an opinion that management's assertion that PIM complied with the Prior Custody Rule was fairly stated, in all material respects, because they failed to obtain:

i. a management assertion; and

ii. sufficient evidence to support such an opinion; and

b. file Form ADV-E with the Commission.

34. With respect to the 2010 Exam, Respondents failed to:

a. complete the examination or withdraw from the engagement and notify PIM of such withdrawal on a timely basis; and

b. file Form ADV-E with the Commission.

35. With respect to the 2011 Exam, Respondents failed to:

a. complete the examination or withdraw from the engagement and notify PIM of such withdrawal on a timely basis; and

b. file Form ADV-E with the Commission.

Respondents Engaged in Improper Professional Conduct

36. Section 4C of the Exchange Act and Rule 102(e)(1)(ii) provide that the Commission may censure or temporarily or permanently deny an accountant the privilege of appearing or practicing before it if it finds, after notice and opportunity for hearing, that the accountant engaged in "improper professional conduct." Rule 102(e)(1)(iv) and Section 4C(b) define "improper professional conduct" to include: (1) "intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards"[9]; or (2) negligent conduct in the form of: (i) "a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which [an accountant] knows, or should know, that heightened scrutiny is warranted"; or (ii) "repeated

[9] The Commission defines recklessness under Rule 102(e) to be the same as recklessness under the antifraud provisions of the federal securities laws: conduct which is an extreme departure from the standards of ordinary care. *See Amendment to Rule 102(e) of the Commission's Rules of Practice*, 63 Fed. Reg. 57164, 57167 (Oct. 26, 1998).

instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission."[10]

37. During the 2009, 2010, and 2011 Exams, Respondents engaged in the following improper professional conduct:

a. Respondents failed to file Form ADV-E with the Commission in connection with the 2009, 2010, and 2011 Exams. *See* AT Section 101.39 (requiring accountant to exercise "due professional care" in performing engagement); AT Section 601.38 (requiring accountant to exercise "due care" in performing engagement).

b. Respondents failed to complete the 2010 and 2011 Exams or withdraw from these engagements and notify PIM of such withdrawals on a timely basis. *See* AT Section 101.64 ("The practitioner who accepts an attest engagement should issue a report . . . or withdraw from the attest engagement.").

c. Respondents issued a report containing an unqualified opinion in connection with the 2009 Exam in contravention of AT Section 101's and AT Section 601's requirements that they obtain a management assertion from PIM in order to do so. *See* AT Section 101.58 ("When the practitioner's client is the responsible party, a failure to obtain a written assertion should result in the practitioner concluding that a scope limitation exists."); AT Section 601.11 ("[T]he practitioner should obtain from the responsible party a written assertion . . . .").

d. Respondents lacked a reasonable basis to conclude in their 2009 Exam report that management's assertion that PIM complied with the Prior Custody Rule was fairly stated, in all material respects, because they identified material variances in the records of certain of PIM's client securities-holding accounts, but did not obtain evidence to explain these variances or otherwise reconcile these variances. *See* AT Section 101.51.

38. Findings

a. Based on the foregoing, the Commission finds that Respondents caused violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder by Professional Investment Management, Inc.

---

[10] Rule 102(e)(1)(iv) describes improper professional conduct with respect to persons licensed as accountants; Section 4C(b) describes improper professional conduct with respect to any registered public accounting firm or associated person.

b. Based on the foregoing, the Commission finds that Respondents engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 4C of the Exchange Act, Section 203(k) of the Advisers Act, and Rule 102(e)(1)(ii) of the Commission's Rules of Practice effective immediately, that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder.

Wilson

B. Respondent Wilson is denied the privilege of appearing or practicing before the Commission as an accountant.

C. Respondent Wilson shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent Wilson may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent Wilson 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 Wilson 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 Respondent Wilson 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 Paul Montoya, Associate Director, Division of Enforcement, Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604-2908.

<u>The Firm</u>

D. Respondent Firm is denied the privilege of appearing or practicing before the Commission as an accountant.

E. After three years from the date of this order, Respondent Firm may request that the Commission consider its reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent Firm's work in its practice before the Commission will be reviewed either by the independent audit committee of the public company for which it works or in some other acceptable manner, as long as it practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

   (a) Respondent Firm, or the public accounting firm with which it is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

   (b) Respondent Firm, or the registered public accounting firm with which it is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

   (c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his/her responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

F. The Commission will consider an application by Respondent Firm to resume appearing or practicing before the Commission provided that its state CPA license is current and it has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent Firm's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

G. Respondent Firm shall, within ten (10) days of the entry of this Order, pay to the Securities and Exchange Commission: (i) a civil money penalty in the amount of $25,000; (ii) disgorgement in the amount of $10,868, which represents profits gained as a result of the conduct described herein; and (iii) prejudgment interest of $1,029. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717 and SEC Rule of Practice 600. 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 Respondent Firm 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 Paul Montoya, Associate Director, Division of Enforcement, Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604-2908.

I. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, interest and penalties referenced in paragraphs IV.C and IV.G, above. Regardless of whether any such Fair Fund distribution is made, 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, they 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 any or both of the Respondents 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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75310 / June 26, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16655

In the Matter of Aspire Japan, Inc., Market & Research Corp. (n/k/a MRC Group Ltd.), McIntosh Bancshares Inc., Pure Minerals, Inc. (f/k/a Pure Pharmaceuticals Corp.) and Salamon Group, Inc., Respondents.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS[1]

1. Aspire Japan, Inc. ("ASJP") (CIK No. 1317838) is a void Delaware corporation located in Los Angeles, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ASJP is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended April 30, 2011, which reported a net loss of $80,852 for the prior three months. As of June 18, 2015, the common stock of ASJP was quoted on OTC Link operated by OTC Markets

[1]The short form of each issuer's name is also its stock symbol.

Group Inc. (formerly "Pink Sheets") ("OTC Link"), had two market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Market & Research Corp. (n/k/a MRC Group Ltd.) ("MTRE") (CIK No. 1009830) is a void Delaware corporation located in Westport, Connecticut with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MTRE is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2010, which reported a net loss of $1,296,562 for the prior nine months. As of June 18, 2015, the common stock of MTRE was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. McIntosh Bancshares Inc. ("MITB") (CIK No. 872545) is a Georgia corporation located in Jackson, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MITB is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2010, which reported a net loss of $10,682,059 for the prior nine months. As of June 18, 2015, the common stock of MITB was quoted on OTC Link, had three market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Pure Minerals, Inc. (f/k/a Pure Pharmaceuticals Corp.) ("PPMA") (CIK No. 1364326) is a revoked Nevada corporation located in Montreal, Quebec, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PPMA is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended December 31, 2010, which reported a net loss of $12,316 for the prior three months. As of June 18, 2015, the common stock of PPMA was quoted on OTC Link, had two market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Salamon Group, Inc. ("SLMU") (CIK No. 1274211) is a revoked Nevada corporation located in Kelowna, British Columbia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SLMU is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2012, which reported a net loss of $3,022,515 for the prior six months. As of June 18, 2015, the common stock of SLMU was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75307 / June 26, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16654

In the Matter of **Accres Holding, Inc.,** **FirstBank Financial Services, Inc.,** **MicroSmart Devices, Inc.,** **Polymedix, Inc.,** **RegenoCELL Therapeutics, Inc., and** **The Sagemark Companies Ltd.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS[1]

1. Accres Holding, Inc. ("ACCE") (CIK No. 1158201) is a void Delaware corporation located in Shelton, Connecticut with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ACCE is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2010, which reported a net loss of $155,470 for the prior nine months. As of June 18, 2015, the common stock of ACCE was quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

[1] The short form of each issuer's name is also its stock symbol.

2. FirstBank Financial Services, Inc. ("FBFS") (CIK No. 1316410) is a non-compliant Georgia corporation located in McDonough, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). FBFS is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2008, which reported a net loss of $6,226,362 for the prior six months. As of June 18, 2015, the common stock of FBFS was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. MicroSmart Devices, Inc. ("MCMV") (CIK No. 1339225) is a Nevada corporation located in Litchfield, Connecticut with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MCMV is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $74,996 for the prior nine months. As of June 18, 2015, the common stock of MCMV was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Polymedix, Inc. ("PYMXQ") (CIK No. 1341843) is a void Delaware corporation located in Radnor, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PYMXQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $12,453,000 for the prior nine months.On April 1, 2013 filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Delaware, which was still pending as of June 22, 2015. As of June 18, 2015, the common stock of PYMXQ was quoted on OTC Link, had twelve market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. RegenoCELL Therapeutics, Inc. ("RCLL") (CIK No. 1221749) is a Florida corporation located in Natick, Massachusetts with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). RCLL is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2011, which reported a net loss of $1,296,000 for the prior year. As of June 18, 2015, the common stock of RCLL was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. The Sagemark Companies Ltd. ("SKCO") (CIK No. 89041) is a New York corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SKCO is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $466,000 for the prior nine months. As of June 18, 2015, the common stock of SKCO was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

9. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75305 / June 26, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16653

In the Matter of **Vantone International Group, Inc.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT [1]

1. Vantone International Group, Inc. ("VNTI") (CIK No. 1101423) is a revoked Nevada corporation located in Shenyang, Liaoning Province, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). VNTI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended December 31, 2011, which reported a net loss attributable to VNTI of $52,563 for the prior nine months. As of June 18, 2015, the common stock of VNTI was quoted on OTC Link operated by OTC Markets Group, Inc. (formerly "Pink Sheets") had five market makers and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

[1] The short form of the issuer's name is also its ticker symbol.

B. DELINQUENT PERIODIC FILINGS

2. As discussed in more detail above, the Respondent is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic reports and failed to bring its filings current in response to the delinquency letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

3. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports.

4. As a result of the foregoing, the Respondent failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondent identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that the Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If the Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon the Respondent personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9856 / June 29, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16661

In the Matter of **the Registration Statement of** **Transfer Enterprises, Inc.** **10045 Red Run Boulevard** **Suite 140** **Owings Mills, MD 21117** **Respondent.**	**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND ISSUING STOP ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that proceedings be, and hereby are, instituted pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") in the matter of the registration statement of Transfer Enterprises, Inc. ("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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Issuing Stop Order Pursuant to Section 8(d) of the Securities Act of 1933 ("Order"), as set forth below.

III.

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

1. On August 21, 2013, Respondent, a Delaware corporation headquartered in Owings Mills, Maryland, filed a Form S-1 registration statement (the "Registration Statement") with the Commission. The Registration Statement stated that Respondent planned to issue 2,000,000 shares of common stock at an offering price of $0.30 per share. The Registration Statement has not become effective.

2. The Registration Statement was materially deficient for the following reasons:

a. The Registration Statement included the untrue statement of material fact that "No ... promoter or control person of our company has, during the last ten years: (i) been convicted in or is currently subject to a pending a [sic] criminal proceeding." At the time the Registration Statement was filed with the Commission, Mark Johnson was concurrently subject to a pending criminal proceeding in the matter *United States v. Mark Johnson, et al.*, No. 08-cr-737 (E.D. Pa.), in which Mr. Johnson was charged with felony securities fraud, among other charges.

b. The Registration Statement omitted information required by Regulation S-K Items 401(g) and 404(c) including, as appropriate, the criminal proceeding pending against Mr. Johnson, Mr. Johnson's status as a "promoter," and Mr. Johnson's status as a "control person," as those terms are defined in Rule 405 of Regulation C under the Securities Act.

IV.

On the basis of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction specified in the Offer submitted by the Respondent.

ACCORDINGLY, IT IS ORDERED that pursuant to Section 8(d) of the Securities Act, the effectiveness of the Registration Statement filed by Respondent and all amendments thereto, be, and it hereby is, suspended.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9858 / June 29, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16663

In the Matter of **the Registration Statement of** **EDGARizing Solutions, Inc.** **10045 Red Run Boulevard** **Suite 140** **Owings Mills, MD 21117** **Respondent.**	**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND ISSUING STOP ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that proceedings be, and hereby are, instituted pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") in the matter of the registration statement of EDGARizing Solutions, Inc. ("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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Issuing Stop Order Pursuant to Section 8(d) of the Securities Act of 1933 ("Order"), as set forth below.

III.

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

1. On August 20, 2013, Respondent, a Delaware corporation headquartered in Owings Mills, Maryland, filed a Form S-1 registration statement (the "Registration Statement") with the Commission. The Registration Statement stated that Respondent planned to issue 2,000,000 shares of common stock at an offering price of $0.30 per share. The Registration Statement has not become effective.

2. The Registration Statement was materially deficient for the following reasons:

a. The Registration Statement included the untrue statement of material fact that "No … promoter or control person of our company has, during the last ten years: (i) been convicted in or is currently subject to a pending a [sic] criminal proceeding." At the time the Registration Statement was filed with the Commission, Mark Johnson was concurrently subject to a pending criminal proceeding in the matter *United States v. Mark Johnson, et al.*, No. 08-cr-737 (E.D. Pa.), in which Mr. Johnson was charged with felony securities fraud, among other charges.

b. The Registration Statement omitted information required by Regulation S-K Items 401(g) and 404(c) including, as appropriate, the criminal proceeding pending against Mr. Johnson, Mr. Johnson's status as a "promoter," and Mr. Johnson's status as a "control person," as those terms are defined in Rule 405 of Regulation C under the Securities Act.

IV.

On the basis of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction specified in the Offer submitted by the Respondent.

ACCORDINGLY, IT IS ORDERED that pursuant to Section 8(d) of the Securities Act, the effectiveness of the Registration Statement filed by Respondent and all amendments thereto, be, and it hereby is, suspended.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9857 / June 29, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16662

In the Matter of **the Registration Statement of** **List Solutions, Inc.** **10045 Red Run Boulevard** **Suite 140** **Owings Mills, MD 21117** **Respondent.**	**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND ISSUING STOP ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that proceedings be, and hereby are, instituted pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") in the matter of the registration statement of List Solutions, Inc. ("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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Issuing Stop Order Pursuant to Section 8(d) of the Securities Act of 1933 ("Order"), as set forth below.

III.

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

1. On August 21, 2013, Respondent, a Delaware corporation headquartered in Owings Mills, Maryland, filed a Form S-1 registration statement (the "Registration Statement") with the Commission. The Registration Statement stated that Respondent planned to issue 2,000,000 shares of common stock at an offering price of $0.30 per share. The Registration Statement has not become effective.

2. The Registration Statement was materially deficient for the following reasons:

a. The Registration Statement included the untrue statement of material fact that "No … promoter or control person of our company has, during the last ten years: (i) been convicted in or is currently subject to a pending a [sic] criminal proceeding." At the time the Registration Statement was filed with the Commission, Mark Johnson was concurrently subject to a pending criminal proceeding in the matter *United States v. Mark Johnson, et al.*, No. 08-cr-737 (E.D. Pa.), in which Mr. Johnson was charged with felony securities fraud, among other charges.

b. The Registration Statement omitted information required by Regulation S-K Items 401(g) and 404(c) including, as appropriate, the criminal proceeding pending against Mr. Johnson, Mr. Johnson's status as a "promoter," and Mr. Johnson's status as a "control person," as those terms are defined in Rule 405 of Regulation C under the Securities Act.

IV.

On the basis of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction specified in the Offer submitted by the Respondent.

ACCORDINGLY, IT IS ORDERED that pursuant to Section 8(d) of the Securities Act, the effectiveness of the Registration Statement filed by Respondent and all amendments thereto, be, and it hereby is, suspended.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9859 / June 29, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16664

In the Matter of **the Registration Statement of** **Borderless Holdings, Inc.** **10045 Red Run Boulevard** **Suite 140** **Owings Mills, MD 21117** **Respondent.**	**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND ISSUING STOP ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that proceedings be, and hereby are, instituted pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") in the matter of the registration statement of Borderless Holdings, Inc. ("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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Issuing Stop Order Pursuant to Section 8(d) of the Securities Act of 1933 ("Order"), as set forth below.

III.

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

1. On August 22, 2013, Respondent, a Delaware corporation headquartered in Owings Mills, Maryland, filed a Form S-1 registration statement (the "Registration Statement") with the Commission. The Registration Statement stated that Respondent planned to issue 2,000,000 shares of common stock at an offering price of $0.30 per share. The Registration Statement has not become effective.

2. The Registration Statement was materially deficient for the following reasons:

a. The Registration Statement included the untrue statement of material fact that "No ... promoter or control person of our company has, during the last ten years: (i) been convicted in or is currently subject to a pending a [sic] criminal proceeding." At the time the Registration Statement was filed with the Commission, Mark Johnson was concurrently subject to a pending criminal proceeding in the matter *United States v. Mark Johnson, et al.*, No. 08-cr-737 (E.D. Pa.), in which Mr. Johnson was charged with felony securities fraud, among other charges.

b. The Registration Statement omitted information required by Regulation S-K Items 401(g) and 404(c) including, as appropriate, the criminal proceeding pending against Mr. Johnson, Mr. Johnson's status as a "promoter," and Mr. Johnson's status as a "control person," as those terms are defined in Rule 405 of Regulation C under the Securities Act.

IV.

On the basis of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction specified in the Offer submitted by the Respondent.

ACCORDINGLY, IT IS ORDERED that pursuant to Section 8(d) of the Securities Act, the effectiveness of the Registration Statement filed by Respondent and all amendments thereto, be, and it hereby is, suspended.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75319 / June 29, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4132 / June 29, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31699 / June 29, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16657

In the Matter of

WELHOUSE & ASSOCIATES, INC., AND MARK P. WELHOUSE,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940

I.

The United States Securities and Exchange Commission (the "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 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Welhouse & Associates, Inc. ("Welhouse") and Mark P. Welhouse ("Mr. Welhouse") (collectively, "the Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. <u>SUMMARY</u>

1. From approximately February 2010 to January 2013 (the "relevant time period"), Mark P. Welhouse, the sole owner of Welhouse & Associates, Inc., an investment adviser registered with the State of Wisconsin, engaged in fraudulent trade allocation – "cherry-picking." Mr. Welhouse executed his cherry-picking scheme by unfairly allocating options trades in an S&P 500 ETF called SPY. He disproportionately allocated those trades that had appreciated in

value during the course of the day to his personal and business accounts, while allocating trades that had depreciated in value during the day to the accounts of his advisory clients. He did this by purchasing the options in an omnibus account and delaying allocation of the purchases until later in the day, after he saw whether the securities appreciated in value.

2. By virtue of their conduct, the Respondents willfully violated Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rule 10b-5 [17 C.F.R. §§240.10b-5] promulgated thereunder, and Sections 206(1) [15 U.S.C. §80b-6(1)] and 206(2) [15 U.S.C. §80b-6(2)] of the Advisers Act.

B. RESPONDENTS

3. **Welhouse & Associates, Inc.**, is a company with its principal place of business in Appleton, Wisconsin and has been registered with the State of Wisconsin as an investment adviser since 1999. According to the most recent Form ADV filed in January 2013, Welhouse had approximately 72 accounts and a total of $4.8 million under management. Welhouse is wholly owned and controlled by Mr. Welhouse. Welhouse's clients are individuals and families.

4. **Mark. P. Welhouse**, age 58, resides in Appleton, Wisconsin. Mr. Welhouse is the owner, principal, and CCO of Welhouse, which he formed in 1999.

C. RESPONDENTS' CONDUCT

Mr. Welhouse Claimed That His SPY Trades Were Allocated Pro Rata

5. During the relevant time period, Mr. Welhouse and Welhouse's clients had their accounts in custody at a brokerage firm ("the broker"). To execute options trades, Mr. Welhouse made trades in a master account at the broker and later allocated the trades to either his or his clients' accounts.

6. Mr. Welhouse was interviewed by the Commission staff on January 28, 2014. Mr. Welhouse agreed that the interview could be recorded, and the staff recorded the interview. During that recorded interview, Mr. Welhouse claimed that to allocate a trade, he needed to manually create a spreadsheet with the trade allocation and then submit the spreadsheet on the broker's trading platform. Mr. Welhouse said his practice was to submit the trade allocation for each account to the broker before 5:00 p.m. on the date the trade was made. Mr. Welhouse stated that he used one master account for trades in his four personal accounts and a different master account for his clients' trades. Despite this statement, Mr. Welhouse also stated that there were times when he allocated SPY options trades from the client master account to his personal accounts. Mr. Welhouse called these allocations "mistakes" and stated that the broker called many times and expressed concern about his allocating SPY options from the clients' master account to his personal accounts.

7. Mr. Welhouse said that during the relevant time period, in investing his clients' funds, he followed four investment models: conservative, moderate, aggressive, and options. Mr. Welhouse said that the options model traded only SPY options, but that he also traded SPY

options in the other models.

8. Mr. Welhouse stated that he allocated all trades pro rata across all accounts for a particular model (including pro rata across Mr. Welhouse's own accounts and his clients' accounts that were on the same model). Mr. Welhouse also stated that Welhouse's January 2012 Form ADV Part 2A's reference to fair and equitable trade allocation is a reference to Mr. Welhouse's pro rata allocation across a model. Additionally, Welhouse's firm brochures on Form ADV, which the Respondents were required to provide to clients, stated that Welhouse did not trade for its own account and that it restricted the trading of employee's accounts. Welhouse's firm brochures did not disclose that Mr. Welhouse invested in, or bought and sold, the same securities that he recommended to clients, failed to discuss the conflicts of interest such trading presents, and did not disclose how Welhouse addresses the conflicts posed by personal trading, as required by Form ADV. Accordingly, parts of Welhouse's Form ADV, Part 2A were false or misleading. In addition, the Respondents did not otherwise disclose the facts underlying the material conflict of interest posed by Mr. Welhouse's purchase and sale of SPY options for both himself and his advisory clients.

9. Welhouse's written policies and procedures for trade allocation state: (1) "[a]ll clients are assigned to a model portfolio. . ."; and (2) "[w]hen a trade is put on the trade is purchased by the model portfolio and automatically allocated to the clients account" on a pro rata basis. The Welhouse trade allocation policies and procedures also state: "We do not have written order tickets or spreadsheet documents reflecting allocations of orders. Our model portfolios have been in use for over 10 years. Our trade allocations are built into our model portfolios."

Welhouse's SPY Options Trades Were Not Allocated Pro Rata

10. Contrary to Welhouse's policies and procedures and its Form ADV statements, Mr. Welhouse, on behalf of Welhouse, did not allocate SPY options trades pro rata. During the relevant time period, Mr. Welhouse allocated a disproportionate number of profitable SPY options trades to favored accounts (accounts belonging to Mr. Welhouse or another person with the last name Welhouse), while allocating unprofitable SPY options trades to client accounts. Mr. Welhouse did so by trading securities in a master account, typically using a day-trading strategy, and then delaying the allocations until later in the day when he could determine whether trades had appreciated or declined in value. During the relevant time period, approximately 58% of SPY options trades occurred before 11:00 a.m. while about 58% of SPY options trades were allocated to accounts after 2:00 p.m. Moreover, approximately 47% of SPY options trades were allocated to accounts after 3:00 p.m., during the last hour of regular market hours for options trading. This delay allowed Mr. Welhouse to selectively allocate profitable trades to his personal accounts.

11. For trades that increased in value on the day of the purchase, Mr. Welhouse often day-traded by selling the option on the same day he purchased it, allocating a disproportionate share of those profitable day trades to his personal accounts. For trades that decreased in value on the day of the purchase, Mr. Welhouse often did not sell the option on the day of purchase; he allocated a disproportionate share of these trades to his clients' accounts.

12. According to the broker's internal compliance notes, an employee of the broker told Mr. Welhouse in April 2010 that the broker was monitoring his trade allocations. During

this conversation, Mr. Welhouse agreed to separate his personal and client trading in different accounts. Following the April 2010 conversation, the broker's trade allocation surveillance system flagged Mr. Welhouse's joint account nine times between May 2011 and September 2012. In February 2012, another employee of the broker called Mr. Welhouse again because he seemed to be making preferential trade allocations from his clients' master account to his personal account. Mr. Welhouse returned the employee's call, and, during the recorded telephone call, the employee reminded Mr. Welhouse to keep his personal trading separate from his clients' master account and Mr. Welhouse agreed he would do so. Then, in June 2012, another employee of the broker called Mr. Welhouse and told him that he was continuing to allocate trades to his personal account from his clients' master account, which had the appearance of preferential trade allocation. The employee reminded Mr. Welhouse of the two prior conversations on the same issue, and the employee told Mr. Welhouse that the broker would consider blocking allocations from a master account to his personal accounts if the practice continued. In September 2012, the broker flagged Mr. Welhouse's trade allocation a ninth and final time. In December 2012, the broker terminated its relationship with Mr. Welhouse.

13. Mr. Welhouse stated that he had allocated from the clients' master account to his personal account several times and that the broker had spoken to him about this practice numerous times before it ceased. Mr. Welhouse stated that any allocations from the clients' master account to his personal account were "mistakes." To support his claims that he had allocated trades pro rata, Mr. Welhouse described how, based on his memory, the performance of his clients' SPY options trades during the period 2009 to 2013 was similar to that of his own SPY options trades.

Mr. Welhouse Reaped Substantial Profits From His Cherry-Picking Scheme

14. Commission staff in the Division of Economic and Risk Analysis ("DERA") analyzed first-day profits and one-day returns for both Mr. Welhouse's personal accounts and his clients' accounts. To do this, DERA first classified all SPY options trades as either day trades or multi-day trades. Day trades are those where both the purchase and sale occur on the same day. All other trades are multi-day trades. DERA analyzed only the first-day return of both day trades and multi-day trades because it is only on the day of purchase, when Mr. Welhouse allocated the trade, that he had the opportunity to cherry-pick the profits.

15. During the relevant time period, Mr. Welhouse allocated 496 SPY options trades to his personal accounts and 1,127 to his clients. The total cost of these trades was $7.25 million for Mr. Welhouse's personal accounts and $8.46 million for his clients' accounts. Mr. Welhouse's total first-day profits on these 496 trades was $455,277. In contrast, Mr. Welhouse's clients suffered a total first-day loss of $427,190. The average first-day return for the trades Mr. Welhouse allocated to himself was 6.28%, while his clients' average first-day return was -5.05%. Combined, the first-day return for all SPY options trades was $28,087, for an average first-day return of 0.18%. In other words, if Mr. Welhouse had allocated all SPY options' first-day returns on a pro rata basis, every SPY options client (including Mr. Welhouse and all his clients who owned SPY options) would have had made a first-day return of 0.18%. By comparing Mr. Welhouse's actual first-day returns of 6.28% to the overall average of 0.18%, DERA concluded that Mr. Welhouse reaped $442,319 in ill-gotten gains.

16. The following chart summarizes the profitability of the SPY option trading:

SPY-Options	Investment	1-Day Profits	1-Day Return	N	Average Profit Per Trade
Panel A: All Trades					
Welhouse Accounts	$7,248,754	$455,277	6.28%	496	$918
Non-Welhouse Accounts	$8,463,500	-$427,190	-5.05%	1,127	-$379
All Accounts	$15,712,254	$28,087	0.18%	1,623	$17
Panel B: Day Trades					
Welhouse Accounts	$5,622,098	$560,883	9.98%	334	$1,679
Non-Welhouse Accounts	$3,913,718	$139,194	3.56%	487	$286
All Accounts	$9,535,815	$700,077	7.34%	821	$853
Panel C: Multi-Day Trades					
Welhouse Accounts	$1,626,657	-$105,606	-6.49%	162	-$652
Non-Welhouse Accounts	$4,549,782	-$566,384	-12.45%	640	-$885
All Accounts	$6,176,439	-$671,990	-10.88%	802	-$838

17. The difference between Mr. Welhouse's first-day profit and that of his clients is highly statistically significant. To test whether the first day profitability of trades allocated to Mr. Welhouse's personal accounts was significantly different from that of those allocated to his clients' accounts, a simulation was run one million times. The simulation tests the possibility that although Mr. Welhouse's accounts were very profitable, he simply selected a lucky combination of trades by chance. Mr. Welhouse's $455,277 profit was substantially higher than every one of the one million random simulations. These results show that there is only an infinitesimal likelihood of achieving by chance a profit like Mr. Welhouse's. Finally, when comparing the proportion of profitable trades allocated to Mr. Welhouse's accounts to the proportion of profitable trades allocated to Mr. Welhouse's clients' accounts, the likelihood of Mr. Welhouse's personal accounts receiving such a high proportion of profitable trades by pure random chance is less than one in one trillion.

Welhouse's clients were not aware of the cherry-picking scheme

18. Mr. Welhouse's clients were not aware that he was trading options in their accounts, or that he was using those accounts to further his own interests by cherry-picking profitable day trades. The Commission staff interviewed three Welhouse clients who experienced significant investment losses on SPY options trades, including unprofitable first day returns. In each instance, the client considered himself or herself to be an inexperienced investor seeking a conservative approach in managing his or her accounts. None of the clients was aware that he or she had invested in options on the S&P 500 Index, and two of the clients did not know what options were. Each of the clients' practice was to review the total account value in a periodic account statement, and these clients did not review the performance of underlying account holdings. Although these reviews could have revealed Mr. Welhouse was trading options, they could never have revealed the cherry-picking scheme. One of the clients recalled significant account losses. When the client asked Mr. Welhouse about the losses, Mr. Welhouse told the client that he had experienced the same losses in his personal accounts. Mr. Welhouse did not reveal that he was selectively allocating trades to client accounts.

E. VIOLATIONS

19. By knowingly or recklessly allocating profitable trades to Mr. Welhouse's own accounts at the expense of advisory clients and making false and misleading statements to clients concerning trade allocation and trading for Mr. Welhouse's own account, Mr. Welhouse and Welhouse willfully[1] violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and, in the alternative, Mr. Welhouse willfully aided and abetted and caused Welhouse's violations. Section 10(b) of the Exchange Act makes it unlawful for any person to use or employ, in connection with the purchase or sale of any security any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe. Rule 10b-5 under the Exchange Act makes it unlawful for any person, directly or indirectly, (a) to employ any device, scheme, or artifice to defraud, (b) to make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

20. In addition, through this cherry-picking scheme and by failing to disclose the scheme, Mr. Welhouse and Welhouse willfully violated Sections 206(1) and 206(2) of the Advisers Act, and, in the alternative, Mr. Welhouse willfully aided and abetted and caused Welhouse's violations. Mr. Welhouse and Welhouse also violated Sections 206(1) and 206(2) by making false or misleading statements to clients in Part 2 of Welhouse's Form ADV and by not otherwise disclosing the facts setting forth their conflicts of interest. Section 206(1) of the Advisers Act prohibits any investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client, and Section 206(2) of the Advisers Act prohibits any

[1] A willful violation of the securities laws means merely "'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.'" Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Sections 203(e) and 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act, including disgorgement pursuant to section 9(e) and civil penalties pursuant to section 9(d); and

D. Whether, pursuant to Section 21C of the Exchange Act and Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act, whether Respondents should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, Section 203(i) of the Advisers Act, and Section 9(d) of the Investment Company Act, and whether Respondents should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act, Section 203 of the Advisers Act, and Section 9 of the Investment Company Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall each file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If either of the Respondents fail to file the directed answer, or fails to appear at a hearing after being duly notified, that Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of

Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Not participating
Commissioner Stein
Disapproved

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9855 / June 29, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16656

In the Matter of **KKR & CO. L.P.**	**ORDER UNDER RULE 405 OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER FROM BEING AN INELIGIBLE ISSUER**

KKR & Co. L.P. ("Company") has submitted a letter, dated June 29, 2015, constituting an application for relief from the Company being considered an "ineligible issuer" under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 ("Securities Act"). The Company requests relief from being considered an "ineligible issuer" under Rule 405, due to the entry on June 29, 2015, of an order against Kohlberg Kravis Roberts & Co. L.P. ("KKR") (the "Cease-and-Desist Order"). The Cease-and-Desist Order requires, among other things, KKR to cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-7 thereunder.

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "Within the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws…."

Under Paragraph two of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.

Based on the representations set forth in the Company's June 29, 2015 request, and on other considerations, the Commission has determined that the Company has made a showing of good cause under Paragraph two of the definition of ineligible issuer in Rule 405 of the Securities Act and that the Company should not be considered an ineligible issuer by reason of the entry of the Cease-and-Desist Order.

Accordingly, IT IS ORDERED, pursuant to Paragraph two of the definition of ineligible issuer in Rule 405 of the Securities Act, that a waiver from KKR & Co. L.P. being an ineligible issuer under Rule 405 of the Securities Act is hereby granted.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4131 / June 29, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16656

In the Matter of **Kohlberg Kravis Roberts & Co. L.P.,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Kohlberg Kravis Roberts & Co. L.P. ("KKR" 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

SUMMARY

1. Respondent Kohlberg Kravis Roberts & Co. L.P. is a private equity firm that specializes in buyout and other transactions. KKR advises and manages its main or "flagship" private equity funds ("Flagship PE Funds") along with co-investment vehicles and other accounts that invest with these funds in buyout and other transactions. During the relevant period of 2006 to 2011, the KKR 2006 Fund L.P. (the "2006 Fund") was KKR's largest private equity fund with $17.6 billion in committed capital. From 2006 to 2011, KKR's Flagship PE Funds invested $30.2 billion in 95 transactions, while KKR co-investment vehicles and other KKR affiliated vehicles invested $4.6 billion, including $750 million by KKR executive co-investment vehicles. The 2006 Fund invested over $16.5 billion during the period primarily in opportunities in North America.[2]

2. Over the same period, KKR incurred $338 million in diligence expenses related to unsuccessful buyout opportunities and other similar types of expenses ("broken deal expenses"). Under the 2006 Fund limited partnership agreement (the "LPA"), KKR was permitted to allocate to the 2006 Fund, or be reimbursed by it for, "all" broken deal expenses that were "incurred by or on behalf of" the 2006 Fund. During the period, KKR allocated broken deal expenses based on the geographic region of the potential deal. Accordingly, KKR allocated broken deal expenses related to North American opportunities to the 2006 Fund. Pursuant to fee sharing arrangements with its Flagship PE Funds during the period, KKR typically bore 20% of all broken deal expenses. However, KKR did not allocate broken deal expenses to KKR co-investors from 2006 to 2011 except for a partial allocation to certain co-investors in 2011. Nor did KKR expressly disclose in the LPA or related offering materials that it did not allocate broken deal expenses to KKR co-investors, as described below, even though these co-investors

---

[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.

[2] This Order focuses on conduct with respect to the KKR 2006 Fund L.P. Other KKR Flagship PE Funds investing during the relevant period from 2006 to 2011 operated similarly to the 2006 Fund and the dollar amounts reflected herein, unless otherwise noted, reflect relevant amounts for all of KKR's Flagship PE Funds that were investing during this period.

participated in and benefited from KKR's sourcing of private equity transactions. As a result of the absence of such disclosure, KKR misallocated $17.4 million in broken deal expenses between its Flagship PE Funds and KKR co-investors during the relevant period, and, thus, breached its fiduciary duty. KKR also did not adopt and implement a written compliance policy or procedure governing its fund expense allocation practices until 2011. By virtue of this conduct, Respondent KKR violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

RESPONDENT

3. **Kohlberg Kravis Roberts & Co. L.P.**, a Delaware limited partnership, is a private equity firm that was founded in 1976. KKR registered as an investment adviser with the Commissión in October 2008. KKR is headquartered in New York, New York. KKR & Co. L.P. (NYSE: KKR), a publicly traded company, is KKR's parent company. During 2006 to 2011, KKR managed a number of private equity funds, including the 2006 Fund.

RELEVANT PARTY

4. **KKR 2006 Fund L.P.**, a Delaware limited partnership, had its first closing on July 31, 2006. The 2006 Fund is one of KKR's main or "flagship" private equity funds. The 2006 Fund actively invested primarily in North American private equity transactions from July 2006 to 2012, with follow-on investments continuing thereafter.

FACTS

KKR's Private Equity Funds

5. KKR primarily advises and sources potential investments for its Flagship PE Funds and other advisory clients that invest capital for long-term appreciation through controlling ownership of portfolio companies or strategic minority positions in them. As of December 31, 2014, KKR had over $51 billion in assets under management in its private equity line of business.

6. KKR's Flagship PE Funds pursue investment strategies that are focused on investing in buyout and other opportunities primarily in one of three designated regions: North America, Europe or Asia. The 2006 Fund was KKR's largest and most

active flagship fund during the period 2006 to 2011. The 2006 Fund has to date invested over $17 billion in a total of 42 portfolio companies.

7. The limited partners in KKR's private equity funds include many large pension funds, university endowments and other large institutional investors and high net worth individuals. As limited partners, these investors commit and subsequently contribute a specified amount of capital to a fund for its use to make qualifying investments during a specified period, which is usually six years.

8. KKR provides investment management and administrative services to its private equity funds. KKR charges its funds a management fee, which generally ranges from 1% to 2% of committed capital during the fund's investment period. As a general partner in its private equity funds, KKR also receives a profits interest or carried interest of up to 20% of the net profits realized by the limited partners in the funds.

9. KKR enters into management or monitoring agreements with certain of its portfolio companies pursuant to which it receives periodic fees for providing management, consulting and other services to the companies. KKR also receives transaction fees for providing financial, advisory and other services in connection with specific transactions. KKR typically shares a portion of these fees with its Flagship PE Funds based on their proportional ownership of the underlying portfolio companies. KKR shares a portion of the fees with its Flagship PE Funds as a credit against the management fee that KKR charges them. Similarly, KKR shares with its Flagship PE Funds any break-up fees that it may receive from the termination of potential transactions based on the intended amount of a fund's proposed investment.

10. KKR's Flagship PE Funds are entitled to invest at least a minimum amount in every portfolio investment within its investment strategy under the applicable LPAs. The 2006 Fund had a specified minimum portfolio investment level of $600 million at its inception before the threshold was lowered to $250 million in 2009.

KKR Co-Investors

11. Beyond capital from its Flagship PE Funds, KKR raises capital from co-investors for its private equity transactions. For all KKR transactions regardless of size, the Flagship PE Fund limited partnership agreements (the "LPAs") reserve a percentage of fund portfolio investments for its executives, certain consultants and others. KKR establishes dedicated co-investment vehicles for its executives, certain consultants and others to make co-investments (the "KKR Partner Vehicles"). The 2006 Fund's LPA

reserved up to 5% of every portfolio investment for KKR executives and up to 2.5% for certain consultants and others. These vehicles invested on a deal-by-deal basis with no specified committed capital. During the relevant period, these vehicles did not receive a share of monitoring, transaction or break-up fees.

12. When the size of a private equity transaction exceeds a Flagship PE Fund's specified minimum investment level and any additional amounts determined to be appropriate for that fund's investment objectives, the LPAs contemplate that KKR may obtain additional capital necessary to complete the transaction from co-investors. For certain co-investors, KKR has established and manages separate co-investment vehicles or similar investment account arrangements independent of any specific transactions ("KKR Co-Investment Vehicles"). The KKR Co-Investment Vehicles invest in private equity transactions alongside the Flagship PE Funds either on a committed or non-committed capital basis. The committed capital vehicles generally invest with KKR's Flagship PE Funds in all eligible co-investment opportunities consistent with the vehicles' investment mandates. The non-committed capital vehicles invest on a discretionary basis in eligible co-investment opportunities.

13. Additionally, KKR sponsored a publicly traded partnership that it established and managed independently of any specific private equity transactions. KKR offered co-investment opportunities to this publicly traded partnership from 2006 to 2008, as well as co-invested capital from its own balance sheet in one transaction in 2011 (collectively, with "KKR Partner Vehicles" and "KKR Co-Investment Vehicles," the "KKR Co-Investors").

14. When KKR requires more capital to complete a private equity transaction beyond what is available from its Flagship PE Funds and the KKR Co-Investors, KKR syndicates additional capital with respect to specific transactions to third-party investors, limited partners in its funds and participants in KKR Co-Investment Vehicles (collectively, the "Syndicated Co-Investors"). As Syndicated Co-Investors, these limited partners in KKR's funds and other participants in KKR Co-Investment Vehicles are interested in making additional investments beyond what they are allocated in the ordinary course of KKR's general sourcing of transactions. Syndicated Co-Investors are therefore not included within the term "KKR Co-Investors."

15. From 2006 to 2011, KKR Co-Investors invested $4.6 billion alongside the $30.2 billion invested by KKR's Flagship PE Funds. KKR Partner Vehicles invested $750 million of the $4.6 billion, while the other KKR Co-Investors invested the

remaining $3.9 billion. KKR Partner Vehicles invested in almost every transaction during the period, while the other KKR Co-Investors collectively invested in many of the transactions that exceeded the applicable flagship fund's minimum investment level.

Broken Deal Expenses

16. KKR incurs significant expenses to source hundreds of potential investment opportunities for its Flagship PE Funds and KKR Co-Investors but consummates only a few of them each year. KKR is reimbursed directly from portfolio companies for the expenses incurred in connection with successful transactions. KKR is reimbursed for broken deal expenses through a different mechanism described below.

17. Broken deal expenses include research costs, travel costs and professional fees, and other expenses incurred in deal sourcing activities related to specific "dead deals" that never materialize. Broken deal expenses also include expenses incurred by KKR to evaluate particular industries or geographic regions for buyout opportunities as opposed to specific potential investments, as well as other similar types of expenses.

18. Consistent with other LPAs during the relevant period, the 2006 Fund LPA requires the fund to pay "all" broken deal expenses "incurred by or on behalf of" the fund "in developing, negotiating and structuring prospective or potential [i]nvestments that are not ultimately made."

19. KKR is reimbursed for broken deal expenses through fee sharing arrangements with its funds. Consistent with other LPAs during the relevant period, pursuant to the 2006 Fund LPA and the accompanying Management Agreement between KKR and the 2006 Fund, KKR shared a portion of its monitoring, transaction and break-up fees with the 2006 Fund. More specifically, KKR reduced its management fee by 80% of the 2006 Fund's proportional share of those fees after deducting broken deal expenses. Accordingly, KKR received 20% of those fees, and economically bore 20% of broken deal expenses. The 2006 Fund in turn received 80% of those fees, and economically bore 80% of the broken deal expenses.

20. While KKR bore 20% of broken deal expenses pursuant to the 2006 Fund LPA fee sharing arrangement during the period, neither the 2006 Fund's LPA nor any other offering materials related to the 2006 Fund included any express disclosure that KKR did not allocate broken deal expenses to KKR Co-Investors even though those vehicles participated in and benefited from KKR's general sourcing of transactions.

KKR's Historical Broken Deal Expense Allocations

21. From 2006 to 2011, KKR incurred approximately $338 million in broken deal expenses. KKR allocated broken deal expenses based on the geographic region where the potential deal was sourced. For example, KKR allocated broken deal expenses related to potential North American investments to the 2006 Fund. However, prior to 2011, KKR did not allocate or attribute any broken deal expenses to KKR Co-Investors.

22. In June 2011, KKR recognized during an internal review that it lacked a written policy governing its broken deal expense allocations. From July to October 2011, KKR drafted a policy to memorialize its expense allocation methodology at the time. Before 2011, KKR had not considered whether to allocate or attribute broken deal expenses to KKR Co-Investors because in its view the Flagship PE Funds bore all broken deal expenses less the portion of those expenses that KKR bore pursuant to its fee sharing provisions with the applicable funds.

23. While drafting its fund expense allocation policy, KKR considered whether to allocate or attribute broken deal expenses to KKR Co-Investors. KKR decided at the time to allocate some share of broken deal expenses to several committed capital co-investment vehicles. For its fiscal year ending December 31, 2011, KKR allocated $333,500 of broken deal expenses to those co-investment vehicles.

24. In October 2011, KKR engaged a third-party consultant to review the firm's fund expense allocation practices. At the time, there was public awareness of heightened regulatory scrutiny on the private equity industry.

25. Effective January 1, 2012, KKR revised its broken deal expense allocation methodology in the wake of the third-party consultant's review of KKR's fund expense allocation practices. In addition to committed capital co-investment vehicles, KKR's new allocation methodology began in 2012 to allocate or attribute a share of broken deal expenses to KKR Partner Vehicles and other KKR Co-Investors. KKR's new methodology considered a number of factors, including the amount of committed capital, the amount of invested capital, and the percentage of transactions in which KKR Co-Investors were eligible to participate given the Flagship PE Funds' minimum investment rights. The new allocation methodology is not a subject of this Order.

OCIE Compliance Examination

26. In 2013, staff from the Commission's Office of Compliance Inspections and Examinations ("OCIE") conducted an examination of KKR. One area of the examination concerned KKR's fund expense allocation practices. During the examination, KKR refunded its Flagship PE Funds, including the 2006 Fund, a total of $3.26 million in certain broken deal expenses that KKR had allocated to them from 2009 to 2011. The $3.26 million represents a total of $4.07 million in broken deal expenses less the portion of those expenses borne by KKR pursuant to its fee sharing arrangements with the applicable funds. KKR refunded the $3.26 million to the Flagship PE Funds in the first quarter of 2014.

Misallocation of Broken Deal Expenses to Flagship PE Funds

27. Prior to the adoption by KKR of its new allocation methodology and except for partial allocations to certain committed capital co-investors in 2011, KKR did not allocate any share of broken deal expenses to KKR Co-Investors, whether paid by the KKR Co-Investors or KKR, for the relevant period even though KKR Co-Investors participated in and benefited from KKR's general sourcing of transactions. Nor did KKR expressly disclose in the LPAs or related offering materials that it did not allocate or attribute any broken deal expenses to KKR Co-Investors. As a result of the absence of such disclosure, KKR misallocated $17.4 million in broken deal expenses between its Flagship PE Funds and KKR Co-Investors during the relevant period, and, thus, breached its fiduciary duty as an investment adviser. The $17.4 million represents the sum total of $22.5 million in broken deal expenses for the relevant period as calculated based on a methodology consistent with KKR's post-2012 allocation methodology less the portion of those expenses borne by KKR pursuant to its fee sharing arrangements with the applicable funds.

Deficient Compliance Policies and Procedures

28. In October 2008, KKR registered with the Commission as an investment adviser and became subject to the applicable Advisers Act rules governing registered investment advisers, including Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. KKR did not adopt and implement a written compliance policy or procedure governing its broken deal expense allocation practices until 2011.

VIOLATIONS

29. As a result of the conduct described above, Respondent violated Section 206(2) of the Advisers Act, which prohibits an investment adviser, directly or indirectly, from engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." A violation of Section 206(2) may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

30. As a result of the conduct described above, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires a registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

KKR'S REMEDIAL EFFORTS

31. In determining to accept the Offer, the Commission considered remedial acts taken by KKR and cooperation afforded by KKR to Commission staff during the OCIE compliance examination and subsequent investigation.

IV.

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

Accordingly, pursuant to Sections 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

B. Respondent shall pay disgorgement and prejudgment interest as follows:

a. Respondent shall pay a total of $18,677,409 consisting of disgorgement of $14,165,968 and prejudgment interest of $4,511,441 (collectively, the "Disgorgement Fund") to compensate the 2006 Fund and the other Flagship PE Funds that invested in private equity transactions from 2006 to 2011 pursuant to the provisions of this Subsection B. The disgorgement amount of $14,165,968 represents: (i) $17,421,168 of broken deal expenses which is net of the percentage of those expenses borne by KKR pursuant to its fee sharing arrangements with the applicable funds **less** (ii) the 2014 refund of $3,255,200 which is net of the percentage of those expenses borne by KKR pursuant to its fee sharing arrangements with the applicable funds;

b. Within ten (10) days of entry of this Order, Respondent shall deposit the full amount of the Disgorgement Fund into an escrow account acceptable to the Commission staff and shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit of the Disgorgement Fund is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600;

c. Respondent shall be responsible for administering the Disgorgement Fund. Respondent shall distribute the amount of the Disgorgement Fund to the applicable funds as a credit against or other effective reduction of certain fees or other amounts that the funds would otherwise be obligated to pay to KKR or that KKR would otherwise be entitled to receive. Within 30 days of the entry of this Order, KKR shall submit a proposed distribution to the staff for review and approval. The proposed distribution will include the names of the applicable funds and payment amounts. The distribution of the Disgorgement Fund shall be made in the next fiscal quarter immediately following the entry of this Order but no later than within 90 days of the date of the Order based on a methodology that is consistent with KKR's current broken deal expense allocation methodology. If Respondent does not distribute any portion of the Disgorgement Fund for any reason, including factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury. Any such payment shall be made in accordance with Section IV.C below;

d. Respondent agrees to be responsible for all tax compliance responsibilities associated with distribution of the Disgorgement Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondent and shall not be paid out of the Disgorgement Fund; and

e. Within 120 days after the date of the entry of the Order, Respondent shall submit to the Commission staff a final accounting and certification of the disposition of the Disgorgement Fund not unacceptable to the staff, which shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (i) the amount paid or credited to each fund; (ii) the date of each payment or credit; (iii) the check number or other identifier of money transferred or credited to the fund; and (iv) any amounts not distributed to be forwarded to the Commission for transfer to the United States Treasury. Respondent shall submit the final accounting and certification, together with proof and supporting documentation of such payments and credits in a form acceptable to Commission staff, under a cover letter that identifies Kohlberg Kravis Roberts & Co. L.P. as the Respondent in these proceedings and the file number of these proceedings to Panayiota K. Bougiamas, Assistant Regional Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York, 10281, or such other address the Commission staff may provide. Any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request. Once the Commission approves the final accounting, Respondent shall pay any amounts that have not been distributed to the Commission for transmittal to the United States Treasury.

C. Respondent shall, within ten (10) days of the entry of this Order, pay a civil monetary penalty in the amount of $10 million to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with the Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Kohlberg Kravis Roberts & Co. L.P. 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 Marshall Sprung, Co-Chief Asset Management Unit, Division of Enforcement, Los Angeles Regional Office, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Not participating
Commissioner Gallagher
Commissioner Piwowar
Dissented as to the
Municipal Advisor
and NRSRO Bars

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75327 / June 29, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4133 / June 29, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16659

In the Matter of **JERRY GRUENBAUM, ESQ.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Jerry Gruenbaum, Esq. ("Respondent" or "Gruenbaum").

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 and the findings contained in Sections III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. From April 2004 through September 2011, Gruenbaum was a registered representative of the broker-dealer First Union Securities, Inc., for which he was also the CEO and COO, located in Shelton, Connecticut and registered with the Commission. Before 2004, Gruenbaum was variously a registered representative of the broker-dealers Benchmark Securities Group, Inc., CIGNA Securities, Inc., Financial Services and Investment Corporation, and North American Investment Corp. From June 2005 through December 2011, Gruenbaum was also a co-owner and principal of the registered investment adviser Puritan Capital LLC, located in Westport, Connecticut. Gruenbaum is not currently associated with a registered broker-dealer or registered investment adviser.

2. Gruenbaum is 59 years of age and resides in Woodbridge, CT. As of April 22, 2015, Gruenbaum is incarcerated and serving a six-month imprisonment sentence.

3. On July 15, 2014, Gruenbaum pled guilty to two counts of Making and Subscribing a False Tax Return in violation of Title 26, United States Code, Section 7206(1) before the United States District Court for the District of Connecticut in United States v. Gruenbaum, No. 3:14-cr-153-VLB. On January 29, 2015, a judgment in the criminal case was entered against Gruenbaum. He was sentenced to six months imprisonment followed by one year supervised release. He was also ordered to cooperate with the Internal Revenue Service to pay all outstanding taxes, interest, and penalties.

4. The counts of the criminal information to which Gruenbaum pled guilty alleged that Gruenbaum did willfully make and subscribe false and fraudulent Form 1040 Personal Income Tax Returns for the fiscal years ending December 31, 2006 and December 31, 2007, which were verified by a written declaration that they were made under penalties of perjury and which Gruenbaum did not believe to be true and correct as to every material matter. The Form 1040s, which were filed with the Internal Revenue Service, were false and fraudulent as to a material matter in that they understated Gruenbaum's reportable income, whereas Gruenbaum knew that the actual reportable income was materially greater than that which was reported on the Form 1040s.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act, and Section 203(f) of the Advisers Act, that Respondent Gruenbaum be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent; and

Pursuant to Section 15(b)(6) of the Exchange Act Respondent Gruenbaum be, and hereby is 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.

Any reapplication for association by the 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75328 / June 29, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16660

In the Matter of **JERRY GRUENBAUM, Esq.,** **Respondent.**	**ORDER OF FORTHWITH SUSPENSION PURSUANT TO RULE 102(e)(2) OF THE COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Jerry Gruenbaum ("Gruenbaum") pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.102(e)(2)].[1]

II.

The Commission finds that:

1. Gruenbaum is an attorney, whom the State of Connecticut admitted to practice law in 1984.

2. Gruenbaum regularly appeared and practiced before the Commission as an attorney on behalf of issuers, among others.

3. On January 29, 2015, a judgment of conviction was entered against Gruenbaum in *United States v. Gruenbaum*, No. 3:14-cr-153-VLB, in the United States District Court for the District of Connecticut, finding him guilty of two counts of Making and Subscribing a False Tax Return, in violation of Title 26, United States Code, Section 7206(1).

4. As a result of this conviction, Gruenbaum was sentenced to six months

[1] Rule 102(e)(2) provides in pertinent part: Any attorney who has been suspended or disbarred by a court of the United States or of any State; . . . or any person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission." See 17 C.F.R. 201.102(e)(2).

imprisonment in a federal penitentiary, one year supervised release, and ordered to cooperate with the Internal Revenue Service to pay all outstanding taxes, interest, and penalties.

III.

In view of the foregoing, the Commission finds that Gruenbaum has been convicted of a felony within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that Jerry Gruenbaum is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4134 / June 30, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3666 / June 30, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16668

In the Matter of **JONATHAN D. DAVEY, CPA** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), against Jonathan D. Davey ("Respondent" or "Davey").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From at least 2001 through May 2009, Davey was the President, Secretary, Treasurer, Director, controlling shareholder, and an associated person of Trustar Capital Management Inc., later known as Safe Harbor Wealth Investments, Inc. ("Safe Harbor"), an Ohio-registered investment adviser. On or about May 28, 2009, Divine Stewardship, LLC ("Divine Stewardship") assumed all of Safe Harbor's assets, policies, and management and continued as successor to Safe Harbor's business as an Ohio-registered investment adviser. Davey served as Divine Stewardship's Manager and he owned and controlled Divine Stewardship.

2. From on or about May 15, 2000 until on or about December 31, 2010, Davey maintained an active certified public accountant license from the state of Ohio.

3. Davey is 51 years old and is currently incarcerated at the Elkton Federal Correctional Institution in Lisbon, Ohio.

B. ENTRY OF RESPONDENT'S CRIMINAL CONVICTION

4. On February 22, 2012, Davey and three other persons were charged with violations of 18 U.S.C. § 371, 18 U.S.C. § 1349, and 18 U.S.C. § 1956(h), pursuant to a Bill of Indictment (the "Indictment") alleging a securities fraud conspiracy, wire fraud conspiracy, and money laundering conspiracy, which Indictment was filed in the United States District Court for the Western District of North Carolina, Charlotte Division, in the case of United States of America v. Jonathan D. Davey, *et al.*, U.S. District Court for the Western District of North Carolina, Charlotte Division, Docket No. 3:12-cr-68-RJC. The Indictment also charged Davey with tax evasion, in violation of 26 U.S.C. § 7201.

5. The Indictment alleged, among other things, that: (a) from approximately October 2007 through April 2010, Davey and other persons carried out an investment fraud conspiracy by convincing investors in Mecklenburg County, North Carolina and elsewhere to invest with the defendants' supposed hedge funds; (b) victims nationwide were defrauded of over $40 million; (c) Davey served the conspiracy as an "administrator" for his co-conspirators and as a hedge fund manager, and he also lured his own investor victims; (d) Davey used investment adviser Safe Harbor and other affiliated entities to collect victim money; and, (e) Davey conspired to falsely represent to investor victims that the conspirators had conducted due diligence on investments and operated legitimate hedge funds with significant safeguards. The Indictment further alleged that, between August 2008 and February 2011, Davey undertook a number of actions to evade the income taxes properly due and owing on the money that Davey stole from victims to build his personal mansion.

6. On February 8, 2013, after a trial, a jury found Davey guilty of: (a) conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371; (b) conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349; (c) conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h); and, (d) tax evasion, in violation of 26 U.S.C. § 7201.

7. On January 15, 2015, the U.S. District Judge in the criminal case sentenced Davey to 252 months in prison, followed by three years of supervised release, and ordered Davey to pay over $21.8 million in restitution to defrauded victims and to the Internal Revenue Service. On February 4, 2015, the U.S. District Judge signed a Judgment in a Criminal Case against Davey (the "Conviction"), ordering the sentence imposed at the hearing.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and,

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75332 / June 30, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16666

In the Matter of **Green Planet Solutions Corp.,** **Harbor Town Holding Group I, Inc.,** **IDG Capital Holdings, Inc. (f/k/a Artcraft VI, Inc.), and** **Innovative Financial Network, Inc. (f/k/a Information Link Corp.),** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Green Planet Solutions Corp., Harbor Town Holding Group I, Inc., IDG Capital Holdings, Inc. (f/k/a Artcraft VI, Inc.), and Innovative Financial Network, Inc. (f/k/a Information Link Corp.).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Green Planet Solutions Corp. (CIK No. 1353491) is a void Delaware corporation located in Delray Beach, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Green Planet is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2008, which reported a net loss of $5,850 from the company's December 9, 2005 inception to June 30, 2008.

2. Harbor Town Holding Group I, Inc. (CIK No. 1050578) is a dissolved Florida corporation located in West Palm Beach, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Harbor Town is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1998, which reported a net loss of $46,286 from the company's May 6, 1997 inception to September 30, 1998.

3. IDG Capital Holdings, Inc. (f/k/a Artcraft Vl, Inc.) (CIK No. 1294616) is a void Delaware corporation located in Miami, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). IDG Capital is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended November 30, 2004, which reported a net loss of $1,100 from the company's June 7, 2004 inception to November 30, 2004.

4. Innovative Financial Network, Inc. (n/k/a Information Link Corp.) (CIK No. 1103714) is a dissolved Florida corporation located in Richmond, Virginia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Information Link is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended May 31, 2001, which reported a net loss of $2,579 for the prior six months.

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9860 / June 30, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16667

In the Matter of Peter Voutsas, Respondent.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate 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") against Peter Voutsas ("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, 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, 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 that:

Summary

1. These proceedings arise out of the offer and sale of securities of the microcap issuer Gepco, Ltd. ("Gepco"). In connection with the offer and sale of these securities, Voutsas, an officer of Gepco, engaged in transactions, practices, or a course of business which operated or would operate as a fraud or deceit upon the purchaser of securities. As a result of Voutsas's negligent conduct, prospective investors received misleading information about the nature of their investment and/or about Gepco's financial condition.

Respondent

2. Voutsas, age 53, resides in Santa Monica, California. Voutsas is the Chief Executive Officer and Chief Investment Officer of Gepco and GemVest, Ltd. Voutsas also owns a retail jewelry store in Beverly Hills, California. From late 2013 until September 2014, Voutsas participated in the offer and sale of shares of Gepco, which is a penny stock.

Other Relevant Entities

3. Gepco is a Nevada corporation with its principal place of business in Santee, California. Gepco's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 and its shares are currently quoted on OTC Link (formerly the "Pink Sheets") operated by OTC Markets Group Inc. under the symbol "GEPC." Gepco was originally incorporated on June 27, 2008 as Kensington Leasing, Ltd., a company that purported to "specialize in leasing equipment to a select clientele." Gepco entered into a reverse merger with a private Nevada corporation, GemVest Ltd., that was completed on December 6, 2013. The company purports to "broker high end investment grade diamonds." For the period ended June 30, 2014, Gepco reported cash of $6,716, total stockholders' equity deficit of $545,263, and a net loss since inception of $176,487. On September 18, 2014, the Commission suspended trading in Gepco's securities for a period of ten business days on the ground that it appeared there was a lack of accurate information concerning, and potentially manipulative transactions in, Gepco's securities.

4. Izak Zirk de Maison (f/k/a Izak Zirk Engelbrecht) ("Engelbrecht"), age 57, resided in Redlands, California until September 18, 2014, when he was arrested in connection with a criminal action involving microcap stock issues, including Gepco. He is the undisclosed control person of Gepco and is married to Angelique de Maison, Gepco's Executive Chairman for most of the relevant period. Since at least 2008, he has served as an officer and director of a number of microcap issuers.

5. Angelique de Maison ("de Maison"), age 43, resides in Redlands, California. She is married to Engelbrecht. Between October 2013 and July 2014, de Maison served as Gepco's Executive Chairwoman.

Background

6. From late 2013 until September 2014 Voutsas participated in the offering of securities of Gepco (the "relevant period"). Gepco had been controlled by Engelbrecht since its incorporation in 2008, and between 2008 and 2013 he caused it to enter into a number of reverse mergers in which its line of business veered wildly, from equipment leasing, to the distribution of prepaid store value cards, to social media. On October 2, 2013, Engelbrecht caused others to incorporate GemVest Ltd., a purported gemological business, in Nevada, naming himself, along with de Maison, Voutsas, and others, as directors and officers.

7. On October 15, 2013, Gepco announced that it had entered into a Stock Purchase Agreement with GemVest. The reverse merger was completed on December 6, 2013 and disclosed in a Form 8-K filed on December 12, 2013. As a result of the reverse merger, de Maison was named Executive Chairman of Gepco and GemVest; and Voutsas was named Chief Executive Officer and Chief Investment Officer of Gepco and GemVest.

8. As a result of the reverse merger, Gepco issued 150 million shares of common stock to GemVest's purported shareholders.

Voutsas Failed To Disclose Engelbrecht's Role In and Control Over Gepco

9. Despite the fact that Gepco has never named Engelbrecht as an officer or director of Gepco—either in its filings with the Commission, in press releases, or on its website—he has always controlled the company. Yet this control was not disclosed to investors by, among others, Voutsas.

10. For example, in an October 20, 2013 email Engelbrecht advised Voutsas, among others, that because of the disastrous results for investors in a prior issuer controlled by Engelbrecht, it would be better if his role was not disclosed to investors.

11. Furthermore, before a meeting with investors in April 2014 in which Voutsas participated, Englebrecht told Voutsas and others that because of various investigations by enforcement authorities, he had to go underground and directed them not to reveal his role in managing the company to prospective or actual investors.

Voutsas Negligently Participated In a Fraud or Deceit on Investors Related to Materially Misleading Statements Concerning Gepco

12. On January 23, 2014, Gepco announced in a press release the purchase of a 10.76 carat diamond—one of only two diamond purchases or sales announced by Gepco to date. The press release was initially drafted by another officer of Gepco, who forwarded it to Engelbrecht and de Maison on January 22 for their comments and for de Maison to provide a quote. The final version released the following day stated that GemVest had purchased the stone "for half of the current Rapaport [a diamond price benchmark publication] wholesale price" and that the company anticipated being "able to at least triple our investment upon its sale." The release also quoted Voutsas and de Maison extolling the purchase.

13. De Maison was quoted as saying, "[i]t is very reassuring that our first purchase is such a substantial stone. The Rapaport price is over $500,000 and we paid half of that price. We are very confident that Peter [Voutsas] will obtain the best price for us that will still represent fair value for the new owner. We are very determined to continue what we are starting here and have great confidence in the business model."

14. Voutsas was quoted as saying, "[t]his is a spectacular stone" and that "[b]y being able to purchase this stone for half of the current Rapaport wholesale price, I anticipate that we will be able to at least triple our investment upon its sale."

15. The press release omitted a number of material facts necessary to make the representations in the press release not misleading. The first was that the diamond that Gepco purported to purchase was once owned by de Maison.

16. The press release further failed to disclose that de Maison had already pledged the stone to an investor in another Engelbrecht company to secure a $250,000 loan; that when she was unable to repay that debt, another confederate stepped in and repaid the $250,000 loan and received the stone in return; and that this confederate then sold the stone to Gepco in exchange for a $250,000 promissory note that Gepco issued to him.

17. As a result of the conduct described above, Voutsas violated Section 17(a)(3) of the Securities Act, which prohibits engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser of securities. As a result of Voutsas's negligent conduct, investors received misleading information about the nature of their investment and/or Gepco's financial condition.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, it is hereby ORDERED that:

A. Respondent Voutsas cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act.

B. Respondent Voutsas be, and hereby is:

> 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.

C. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. 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 Voutsas 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 Amelia A. Cottrell, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281.

D. The Commission will hold funds paid in this proceeding in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, in accordance with Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund ("Fair Fund distribution") pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. Regardless of whether any such Fair Fund distribution is made, 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.

E. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of $50,000 based upon his agreement to cooperate in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense. Respondent Voutsas will make himself available as reasonably needed in this connection.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75331 / June 30, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16665

In the Matter of **Goldman, Sachs & Co.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) 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 (the "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) and 21C of the Securities Exchange Act of 1934 (the "Exchange Act") against Goldman, Sachs & Co. ("GSCO" 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 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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 that:

INTRODUCTION

1. This proceeding arises out of GSCO's violations of the market access rule and an event that disrupted trading in the options markets on August 20, 2013.

2. The Commission adopted Exchange Act Rule 15c3-5[1] in November 2010 to require that brokers or dealers, as gatekeepers to the financial markets, "appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system."[2]

3. Subsection (b) of Rule 15c3-5 requires brokers or dealers with market access to "establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks" of having market access. The rule addresses a range of market access arrangements, including customers directing their own trading while using a broker's market participant identifications, brokers trading for their customers as agents, and a broker-dealer's trading activities that place its own capital at risk.

4. Subsection (c) of Rule 15c3-5 identifies specific required elements of a broker's or dealer's risk management controls and supervisory procedures. A broker or dealer must have systematic financial risk management controls and supervisory procedures that are reasonably designed to prevent the entry of erroneous orders that exceed appropriate price or size parameters and orders that exceed pre-set credit and capital thresholds in the aggregate for each customer and the broker or dealer.

5. On August 20, 2013, as a result of a configuration error in one of GSCO's options order routers, the firm erroneously sent thousands of $1.00 limit orders to the options exchanges prior to the start of regular market trading. Before the market open at 9:30 a.m., GSCO shut off the creation of additional options orders and initiated efforts to cancel the erroneous orders that it had sent to the exchanges. However, within minutes after the opening of regular market trading, GSCO already had received executions for a portion of its unintended sell orders, representing approximately 1.5 million options contracts (representing 150 million underlying shares). Though GSCO faced up to a potential $500 million loss from the executions, the firm's loss ultimately amounted to approximately $38 million, after taking into account executed orders that were cancelled or received price adjustments pursuant to the options exchanges' rules concerning clearly erroneous trades.

---

[1] 17 C.F.R. § 240.15c3-5. The initial compliance date for Rule 15c3-5 was July 14, 2011. On June 30, 2011, the Commission extended the compliance date for certain requirements of Rule 15c3-5 until November 30, 2011.

[2] Risk Management Controls for Brokers or Dealers with Market Access, 75 Fed. Reg. 69792, 69792 (Nov. 15, 2010) (final rule release).

6. The August 20, 2013 options trading event resulted from a series of failures in GSCO's then-existing system of risk management controls and supervisory procedures, exacerbated by human error.

7. First, the price checks in GSCO's Sigma Options order matching system failed to prevent the entry of the erroneously priced pre-market orders. The Sigma Options system was used to match customer and firm contingent options orders and then send those crossed orders to the exchanges. During market hours, Sigma Options applied price checks based on the then-current bid and ask prices for each listed option series. However, during pre-market hours, Sigma Options employed a "default" price check that allowed the transmittal of options orders with any price greater than $0.01 and less than 1.5 times the highest closing price for any listed option from the prior day. On August 19, 2013, the highest closing price of any listed option was $2,060 (the price of the call option to purchase 100 shares of the Nasdaq 100 Index at a strike price of $1,000 with an expiration date of December 2013). Thus, on August 20, option orders that were entered prior to market open "passed" the price check as long as they were priced above $0.01 and below $3,090.[3]

8. In addition, the firm's operation and management of its electronic "circuit breakers" did not effectively block the erroneous orders sent on August 20. These circuit breakers existed to prevent erroneous orders by halting all message traffic to the exchanges once that traffic had exceeded a certain rate. However, on August 20, the firm's control personnel repeatedly lifted the circuit breakers blocks between 8:44 a.m. and 9:32 a.m., thereby permitting additional erroneous orders to be sent to the exchanges. Before lifting the circuit breaker blocks, the control personnel did not obtain authorization from the responsible technology employees, as required under written firm policies.

9. The firm's policies relating to the manual "lifting" of those circuit breakers were not disseminated to or fully understood by the employees responsible for deciding when the circuit breakers should be lifted, and, prior to August 20, 2013, GSCO personnel had lifted circuit breaker blocks shortly after learning of the block and while still investigating the cause of the circuit breaker trip.

10. The manner in which GSCO implemented software changes that impacted the firm's order flow also contributed to the August 20 event. In particular, the firm's written policies did not require that a software configuration change be reviewed by an employee other than the person who made the particular change. The firm's written policies did not require testing of all parallel information flows (or "stripes") that could potentially generate orders sent to the exchanges. The policies did not explicitly require that persons who implement software changes notify other relevant persons who may be impacted by those changes, and also did not require

---

[3] Since August 20, 2013, the firm has implemented pre-market price checks in Sigma Options, as well as in the trading systems utilized by the firm's direct market access ("DMA") clients, that are based on the previous day's closing price for each individual option (using a price band of +/-100% of the prior day's closing price for options that closed below $1, and a price band of +/-50% of the closing price for options that closed at $1 or above).

personnel who make coding or configuration changes to be present on the day that those changes are put into production.[4]

11. GSCO also had deficiencies in the risk management controls and supervisory procedures designed to prevent orders that exceed the firm's pre-set capital threshold.

12. Specifically, the firm only calculated its open equities and options orders and executions every 30 minutes, with its systems generating an automated alert when 75% of the capital threshold was reached. The length of the calculation interval exposed the firm to the possibility that orders exceeding the firm's capital threshold would be executed and their impact on the aggregate capital exposure would not be known until up to 30 minutes after order entry. In addition, the firm did not have an automated process to prevent the entry of additional orders in the event the 30-minute calculation revealed that a capital threshold had been breached. Finally, during 2012 and 2013, GSCO failed to include a portion of the trading flow from a number of business units in the firm's capital utilization calculation for the purpose of determining whether the capital threshold was breached, and the calculation also did not include certain open (but unexecuted) orders.

13. As a result of the foregoing, and as described in greater detail below, during the period from at least November 30, 2011 through August 20, 2013, GSCO did not have a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of market access in relation to its listed equity options business.

FACTS

A. Respondent

14. GSCO is a U.S.-based broker-dealer and a wholly-owned subsidiary of The Goldman Sachs Group, Inc. ("Goldman Sachs Group"). GSCO is registered with the Commission pursuant to Section 15 of the Exchange Act and is a Financial Industry Regulatory Authority ("FINRA") member. GSCO has its principal business operations in New York, New York. The common stock of Goldman Sachs Group is registered pursuant to Section 12(b) of the Exchange Act and is listed for trading on the New York Stock Exchange.

---

[4] Since August 20, 2013, the firm has enhanced its written policies and procedures regarding the deployment of new electronic trading software for control and connectivity code of the firm's U.S. listed equity options business by: (a) requiring software code and configuration changes to be subject to secondary review; (b) requiring software code and configuration changes made to production, including all relevant trading flows or stripes, to be verified for correctness; (c) requiring notification of changes to appropriate parties; and (d) requiring appropriate personnel to be available when changes first become effective.

B. The August 20, 2013 Options Trading Incident

GSCO's Technology Change Relating to Provision of Option Liquidity

15. Since 2012, GSCO has been in the process of consolidating into GSCO certain client service functions that had previously been operated either by an affiliated broker-dealer, Goldman Sachs Execution & Clearing, L.P. ("GSEC"), or that had been operated by both GSCO and GSEC. One of the client service functions that had previously been operated at GSEC was the provision of options liquidity to electronic trading customers.

16. This provision of options liquidity was done in part through the use of a matching engine that sought to pair the firm's own indications of interest, also known as "axes" or "contingent orders," in particular options contracts against customer orders. If a trade could be matched between a customer order and the firm's own trading interests, the customer order would be paired with the firm's interest and a paired order would be sent to an exchange for execution in accordance with applicable rules. (If there was no match, the customer order would be routed to the market.) Axes are based on the firm's interest in executing trades for its own accounts, and are contingent on price, size, and other parameters. Axes are not intended to go to the exchanges unless paired with a customer order; they are intended to remain in the matching engine and search for customer orders to pair-off against.

17. The software development work related to the migration of certain functions into GSCO started in September 2012. The two technology units principally involved in this project were the Equity Derivatives Automation Team ("Eq-Dat") and Mission Control. Eq-Dat was responsible for developing the systems used by the firm's equity derivatives traders and which interacted with the firm's electronic trading clients. Mission Control monitored those trading systems once they were operating, and handled many of the updates and changes that were required once a particular system was operational.

18. The system designed by Eq-Dat used an algorithm to generate axes. Each axe contained a placeholder price of $1, though the system was designed so that the price would adjust based on whatever customer order it executed against. The axes were then sent to a workflow server, which separated the axes into one of two "stripes" based on the ticker symbol of the underlying equity for the option. Options whose underlying equity symbols were in the ranges A-H and L-Z flowed through one stripe, while options with underlying symbols in the I-K range flowed through another.[5]

19. The axes then flowed through two execution servers on their way to seeking a matching customer order in Sigma Options. However, before reaching Sigma Options, the axes passed through a smart order router, which translated order information coming from the two execution servers into a format that was readable by Sigma Options. The translation was

5 Striping is done for staging purposes; a staging environment is necessary for the testing of future changes. Changes are introduced in the stage environment first in order to assess the change on a smaller scale prior to the full scale roll-out.

governed by the configuration values set by Mission Control, which was responsible for connecting the execution servers to the order router.

20. Once it passed through the router, the axe was sent to Sigma Options to see if there was a customer order to match against. When a customer order was matched against an axe, the price on the axe was adjusted from the $1 placeholder price to an actual price that matched the customer order. If an axe was paired against a customer order, the two orders flowed back through the router to the execution servers before being sent to an exchange for crossing. If there was no match between an axe and a customer order, the customer order was routed to the exchange for matching and execution, while the axe remained in Sigma Options (though it may have been replaced by a subsequent axe in the same symbol). Axes were not intended to go to the market without a matching customer order and adjusted price.

<u>The Configuration Error and the Pre-Market Hour Price Checks</u>

21. The execution server that handled the A-H and L-Z ranges was connected to the order router in September 2012; the server that handled the I-K range was connected in January 2013. The connection process involved setting, or "configuring," certain values in the router's software which then controlled how the router would treat the axes.

22. The erroneous options orders sent by GSCO on August 20, 2013 resulted from an incorrect configuration of the order router. The misconfiguration coded the orders flowing through the server responsible for the I-K range as actual live orders, rather than as axes. The configuration work was performed by a Mission Control employee who did not fully understand the technical operation of the new Axe options order flow at the time he performed the configuration. This employee's work was not reviewed by the Eq-Dat team or anyone else at GSCO, nor was such a review required by GSCO's written policies regarding software change management.

23. In addition, the Eq-Dat personnel who tested the new order flow system during the week prior to August 20 sent test axes through the execution server that handled the A-H and L-Z ranges – which was configured correctly – but not the I-K stripe. As a result, those tests did not reveal the misconfiguration.

24. After market-close on August 19, 2013, an Eq-Dat employee activated the axe generation functionality for GSCO, thereby enabling it to start generating order flow for the next trading day (before the market opened). Although informing others of impending changes was considered a best practice at GSCO, Eq-Dat did not inform anyone from Mission Control – the unit responsible for monitoring the relevant equity trading systems – that the axe order flow would begin on August 20, nor was Eq-Dat required to do so by any formal written policy or guideline at GSCO.

25. GSCO's Sigma Options order matching system contains price checks designed to prevent the entry of erroneous options orders to the exchanges. Those price checks are based on the then-current bid and ask prices for each listed option series. As of August 20, 2013, for options with a bid/ask price below $1, the price band was +/- 100% of the current national best bid and offer ("NBBO"); for options with a bid/ask price at or above $1, the price band was +/-

50% of the current NBBO. However, as of August 20, 2013, during pre-market hours, Sigma Options employed a "default" price check, which allowed the transmittal of options orders with any price greater than $0.01 and less than 1.5 times the highest closing price from the prior day for any listed option.

26. GSCO first implemented this price check in June 2011, in anticipation of the implementation date of Rule 15c3-5, and used it both for the Sigma Options system and for the trading systems utilized by the firm's direct market access ("DMA") clients. GSCO's decision to use this default price check was based on the lack of current bid-ask information during pre-market hours and a concern that using the prior day's closing prices as reference points on an option-by-option basis could result in the unnecessary rejection of reasonably priced orders.

27. After this price collar was implemented in the summer of 2011 and prior to August 20, 2013, the default price collar that GSCO used during pre-market hours allowed erroneous orders to go to the market in several instances. Specifically, between November 2011 and August 20, 2013, there were at least three instances in which GSCO's DMA clients sent erroneous options orders during the pre-market period. However, none of these incidents caused GSCO to evaluate whether it should adjust the parameters of the default price check.

Circuit Breaker Practices

28. GSCO also has several circuit breakers in place to prevent erroneous orders. The circuit breakers that exist to prevent erroneous options trades are based on the rate of outgoing electronic messages (*e.g.*, orders, cancellations, and replacements) that are sent by the firm to an exchange during any one-minute interval. When the particular message rate for an exchange is exceeded (or "tripped"), all subsequent orders to that exchange are automatically blocked until a GSCO employee "lifts" the block. The GSCO Mission Control team receives notice when a circuit breaker has been tripped and only Mission Control personnel have the ability to lift a circuit breaker block. However, Mission Control's written policy on circuit breakers required its personnel to obtain authorization from the Eq-Dat team to lift a blockage of options order flow.

29. The Eq-Dat team was responsible for the technology systems relevant to the options order flow. Prior to August 20, 2013, the Eq-Dat team did not have any formal written policies related to when a circuit breaker block should be lifted, nor was the Eq-Dat team informed about Mission Control's policies related to circuit breakers. On multiple occasions prior to August 20, 2013, Eq-Dat personnel instructed Mission Control to lift a circuit breaker block for options shortly after Mission Control had notified Eq-Dat about the block – while Eq-Dat was still investigating the cause of the circuit breaker trip (but after Eq-Dat personnel had formed a belief that the block was not likely to recur).

The Events of August 20, 2013

30. On August 20, 2013, as a result of the unintentional conversion of options axes to live orders, thousands of limit orders for options whose underlying equity symbol began with the letters I through K were submitted to the options exchanges prior to the opening of the markets. Because these orders were mistakenly designated as live orders (rather than axes), the Sigma Options system did not attempt to pair them with customer orders. The orders were not stopped

by the default price check in Sigma Options because they were priced at $1, which fell between $0.01 and $3,090 (which was the highest closing price for any listed option on the prior day, multiplied by 1.5).

31. The circuit breakers for GSCO's connections to the ARCA and AMEX options exchanges tripped several times. At 8:44 a.m. the ARCA/AMEX circuit breaker tripped for the first time. At 9:01 a.m., a Mission Control employee (who had authored the Mission Control circuit breaker policy) noticed the block and lifted it, even though he had not spoken to anyone on the Eq-Dat team or received authorization from Eq-Dat to lift the block. As detailed above, the Eq-Dat team had not notified Mission Control of the new axe order flow, and as a result, the Mission Control employee evaluating the circuit breakers did not know of this change to the order flow.

32. This lifting of the block violated Mission Control's policies regarding circuit breakers (as did multiple additional liftings of blocks later that morning). However, the Mission Control employee's lifting of the block was based, in part, on the Mission Control employee's prior experiences with Eq-Dat in which Eq-Dat personnel had instructed Mission Control, in other circumstances, to lift blocks shortly after learning of them (and prior to completing an investigation as to the cause of the trip). On this occasion, the Mission Control employee lifted the circuit breaker block without obtaining explicit authorization from Eq-Dat. After lifting that first block, this Mission Control employee emailed the Eq-Dat team at 9:03 a.m. At that time, none of the Eq-Dat team members who developed the axe generation functionality were present in GSCO's offices. The Mission Control employee did not receive any response to his 9:03 a.m. email.

33. At 9:07 a.m., the ARCA/AMEX circuit breaker tripped again and at 9:08 a.m., the Mission Control employee initiated an emergency conference call, known at GSCO as a "V-team call," to review the circuit breaker blocks. At 9:12 a.m., approximately the same time that he dialed in to the V-team call, the Mission Control employee cleared the second ARCA/AMEX block. (No one from Eq-Dat had joined the call at this point.)

34. At 9:15 a.m., there was a third ARCA/AMEX circuit breaker trip. The Mission Control employee who initiated the V-team emailed the Eq-Dat team again at 9:17 a.m. to alert them about the blocks. While on the V-team call, the Mission Control employee stated that he was going to clear the block and no one objected. The Mission Control employee cleared the block at 9:18 a.m. The Mission Control employee emailed further information regarding the blocks to the Eq-Dat team at 9:23 a.m.

35. At 9:25 a.m., a member of the Eq-Dat team joined the V-Team call. The following circuit breaker trips then occurred after the market opened: (i) between 9:30 a.m. and 9:31 a.m. – circuit breakers tripped for most of the exchanges; (ii) at 9:31 a.m. – another Mission Control employee cleared the Boston Options Exchange ("BOX") trip – at the same time BOX tripped again; (iii) at 9:32 a.m. – the Mission Control employee cleared all circuit breakers for all exchanges; and (iv) between 9:32 a.m. and 9:35 a.m. – all circuit breakers tripped again. Mission Control did not override these blocks and they remained in place through the evening. At this point, GSCO's global equities division directed that firm personnel shut down all of the firm's options trading flow.

36. GSCO's pre-market price collar did not operate to prevent the entry of the erroneous orders into the market. The erroneous orders that were sent to the market used the default price of $1. This order price did not trigger GSCO's pre-market price collar because it was above $.01 and below the "maximum prior day's option closing price" for *any* listed option. As a result of the breadth of this price check, thousands of the $1 orders went to the exchanges even though the $1 order prices were (in many instances) significantly higher or lower than the prices at which these options had last traded. Many of the orders were not executed. For example, sell orders priced at $1 for options that were trading below $1 were not executed. However, sell orders with $1 limits for options that were trading above $1 were executed.

37. By the time GSCO had cancelled all outstanding options orders at the exchanges, sell orders for approximately 1.5 million options contracts (representing 150 million shares) had been executed. If none of the trades had been cancelled through the firm's invocation of exchanges' obvious error rules and other avenues, the potential gross exposure to GSCO would have been up to $500 million. Because a majority of the trades were either cancelled or have had the price adjusted to a reasonable price under the exchanges' rules, GSCO suffered a loss from the incident of approximately $38 million.

C. <u>Calculation of GSCO's Capital Usage</u>

38. Rule 15c3-5(c)(1)(i) requires the establishment of controls and supervisory procedures that are reasonably designed to "prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer ... by rejecting orders if such orders would exceed the applicable credit or capital thresholds."

39. In 2011, GSCO established a process in which order management and trading systems exported details of the firm's open equities and options orders (as well as executions) to a data aggregator that computed the firm's capital exposure levels every 30 minutes and provided an automated warning when 75% of the capital threshold had been reached. The firm, however, did not calculate its capital exposure levels or generate alerts concerning its capital exposure levels during the 30 minute interim between calculations. Because the firm only calculated its outstanding exposure every 30 minutes, the firm would not have been alerted to breaches of the capital threshold that could have happened during the 30 minute interim between calculations.

40. In addition, in the event the firm's trading reached its pre-set capital threshold, GSCO did not have an automated process for preventing the entry of orders that exceeded the limit. GSCO personnel would have been required to manually disable its trading systems in the event that its trading reached the threshold. Thus, if a breach had occurred, GSCO may have not only lagged behind in learning about the breach, it may also have required additional time to respond manually, thereby increasing the likelihood of additional threshold-breaching orders and a runaway trading incident that could have caused damage to the firm and the wider market.

41. Finally, during 2012 and 2013, GSCO failed to include a portion of the trading flow from a number of business units in the firm's capital utilization calculation for the purpose of determining whether the capital threshold was breached, thereby underestimating the firm's capital exposure. Specifically, the calculation of the threshold did not include all of the trading flow from: (a) the firm's options trading flow from February 2012 to September 9, 2013; (b) the

firm's single stock trading from August 2012 through September 5, 2013; and (c) the firm's ETF and synthetic product trading from December 2012 through September 5, 2013. The failure to include these trading flows understated GSCO's capital utilization.

42. GSCO's capital threshold calculation also did not include open (but unexecuted) equities orders during 2012 and 2013. However, as soon as a portion of an unexecuted order was executed, the full notional value of the entire order (including the unexecuted portion) was then included in the calculation.[6]

VIOLATIONS

43. Section 15(c)(3) of the Exchange Act, among other things, prohibits a broker or dealer from effecting any securities transaction in contravention of the rules and regulations the Commission prescribes as necessary or appropriate in the public interest, or for the protection of investors, to provide safeguards with respect to the financial responsibility and related practices of brokers or dealers. GSCO willfully[7] violated this Section through its willful violations, described herein, of a rule promulgated by the Commission thereunder.

44. Subsection (c)(1)(i) of Rule 15c3-5 requires that a broker or dealer's risk management controls and supervisory procedures shall be reasonably designed to prevent systematically the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer. As set forth in paragraphs 38 through 42, above, GSCO willfully violated this requirement by (a) only computing its capital usage level every 30 minutes with an automated warning when capital usage reached 75%; (b) failing to implement a reasonable process to prevent the entry of orders that exceeded its capital threshold; and (c) failing to include a portion of the trading flow from several business units, and certain unexecuted orders, in its capital usage calculations. GSCO's system of controls did not reasonably manage this aspect of the firm's market access financial risk because significant components of its order flow were not accounted for, and the firm could therefore have exceeded its capital threshold.

45. Subsection (c)(1)(ii) of Rule 15c3-5 requires that a broker or dealer's risk management controls and supervisory procedures be reasonably designed to prevent systematically the entry of erroneous orders that exceed appropriate price or size parameters on an order-by-order basis or over a short period of time, or that indicate duplicative orders. As set forth in paragraphs 25 through 37, above, GSCO willfully violated this requirement by failing to have controls reasonably designed to prevent the entry of erroneous orders by: (a) employing

---

6 GSCO would not have exceeded its capital threshold on August 20, 2013, even if it had factored in the missing trading flows and the open (but unexecuted) orders.

7 A willful violation of the securities laws means merely "'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.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

unreasonably wide price checks for options orders during pre-market hours; and (b) failing to establish and maintain reasonable controls and procedures relating to its options circuit breakers.

46. Subsection (b) of Rule 15c3-5 requires brokers or dealers with market access to "establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks" of having market access. As set forth in paragraphs 21 through 27, GSCO willfully violated this requirement by failing to establish and maintain reasonable controls and procedures with respect to its management of software changes that impact order flow.

RESPONDENT'S REMEDIAL EFFORTS

47. In determining to accept the Offer, the Commission has considered the remedial efforts promptly undertaken by Respondent and its cooperation afforded to the Commission Staff.

IV.

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

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

A. Respondent GSCO cease and desist from committing or causing any violations and any future violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-5 thereunder.

B. Respondent GSCO is censured.

C. Pursuant to Section 21B(a)(1) and (2) of the Exchange Act, Respondent GSCO shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $7,000,000 ($7 million) to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment must be made in one of the following ways: (a) Respondent GSCO may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (b) 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 (c) Respondent GSCO 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 GSCO 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 Daniel M. Hawke, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, One Penn Center, 1617 JFK Blvd., Ste. 520, Philadelphia, Pennsylvania, 19103.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary