

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

**SECURITIES ACT OF 1933**  
**Release No. 9890 / August 13, 2015**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 75689 / August 13, 2015**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4169/ August 13, 2015**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 31751 / August 13, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16752**

**In the Matter of**

**STINA R. WISHMAN,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b), 15B(c), AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 203(f) 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 15(b), 15B(c), and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Stina R. Wishman (“Wishman” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Wishman 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 her and the subject matter of these proceedings, which are admitted, Wishman consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b), 15B(c), and 21C of the Securities Exchange Act of 1934, Section 203(f) 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<sup>1</sup> that:

#### Summary

1. This matter concerns improper practices involving municipal securities by Wishman during her tenure as head of the municipal syndicate desk at Edward D. Jones & Co., L.P. ("Edward Jones"), a retail-oriented broker-dealer based in St. Louis, Missouri. Wishman failed to make bona fide public offerings to Edward Jones' customers at initial offering prices in certain instances when the firm acted as an underwriting co-managing syndicate member for new issue negotiated municipal securities.

2. From at least February 2009 to December 2012 (the "Relevant Period"), and in violation of her fundamental obligations as a member of the underwriting syndicate, Wishman obtained new issue municipal bonds for Edward Jones' own inventory in several negotiated offerings where the firm served as a co-manager, and then, in certain instances, offered those bonds to the firm's customers for prices higher than the initial offering prices negotiated with the issuer before the bonds began trading. In some of these instances during the Relevant Period, Wishman refrained entirely from offering new issue municipal bonds to Edward Jones' customers at any price until after the bonds began trading, at which point she offered and sold the bonds to the firm's customers at prices above the initial offering prices.

3. The sale of municipal bonds to Edward Jones' customers at prices higher than the initial offering prices increased the firm's revenues from municipal underwriting. During the Relevant Period, the firm collected at least \$4.647 million in revenue with these practices through the offer and sale of about 156 different bonds in 75 negotiated offerings in which Edward Jones served as a co-manager. This amount was in addition to the fees Edward Jones earned as a member of the syndicate for certain of those offerings. Wishman's misconduct harmed Edward Jones' customers by causing them to pay prices higher than the initial offering prices for municipal bonds. In addition, in one instance, Wishman's misconduct resulted in an adverse federal tax determination for one municipal issuer, creating a risk that the issuer could lose valuable federal tax subsidies.

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<sup>1</sup> The findings herein are made pursuant to Wishman's Offer. These findings are not binding on any other person or entity in this or any other proceeding.

4. As a result of the conduct described herein, Wishman willfully violated Sections 17(a)(3) of the Securities Act, Rules G-17, G-11(b) and (d), and G-30(a) of the Municipal Securities Rulemaking Board (“MSRB”), and was a cause of Edward Jones’ violations of Section 17(a)(2) of the Securities Act and Section 15B(c)(1) of the Exchange Act.<sup>2</sup>

### **Respondent**

5. **Stina R. Wishman**, age 50, resides in Warren County, Missouri. After joining Edward Jones in 1982, Wishman started and headed the firm’s municipal syndicate desk. She served in that role from 1993 until June 2013. Wishman retired from the firm in July 2014. During the relevant period, she held Series 7, 53, and 63 licenses.

### **Related Entity**

6. **Edward D. Jones & Co., L.P.**, a Missouri limited partnership, is a retail-oriented broker-dealer based in St. Louis, Missouri, with nearly 7 million retail customers and over 12,000 registered representatives, known as financial advisors (“FAs”). Edward Jones is the principal operating subsidiary of the Jones Financial Companies, L.L.P., a Missouri limited partnership whose interests are registered under Section 12(g) of the Exchange Act. Edward Jones is registered with the Commission as a broker-dealer and an investment adviser, and is a municipal securities dealer under Section 3(a)(30) of the Exchange Act.

### **Background on Negotiated Offerings of Municipal Bonds**

7. Municipalities often raise money by issuing to the public new bonds that are sold through an underwriting process. In what is known in the industry as a “negotiated” offering, the municipal issuer will choose an underwriter to act either as the sole underwriter or as the senior manager of the underwriting syndicate. A syndicate is a group of broker-dealers that join together to purchase new issue municipal securities from the issuer for the purpose of distributing those securities and consists of a senior manager, who leads the offering, and co-managing underwriters, or “co-managers.” This matter involves the role of Wishman and Edward Jones as a co-manager in syndicates that underwrote and sold municipal bonds to the public through negotiated offerings.

8. The municipal issuer usually compensates the syndicate for its services in distributing the bonds by selling the bonds to the syndicate at a discount to the “initial offering price,” the price at which the bonds are offered to the investing public by the syndicate at the time of original issuance. The difference between the initial offering price and the discounted price for the syndicate is the “underwriters’ discount” or “underwriters’ spread.”

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<sup>2</sup> 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)).

## Formation of the Underwriting Syndicate and Obligation to Offer Bonds At Initial Offering Prices

9. Syndicates typically have an agreement in place which sets forth the contractual relationship between the senior manager and the co-managers, known as an Agreement Among Underwriters (“AAU”). AAUs memorialize the standard terms of an underwriting for all subsequent transactions in which the parties to the AAU may participate. Template AAUs that are specifically tailored for negotiated municipal offerings are published by industry associations and are used commonly by active municipal underwriters.

10. During the Relevant Period, underwriters that used the template AAUs for negotiated municipal offerings were obliged, under those agreements, to make a public offering of all bonds at the initial offering price in effect at the time they were allocated bonds by the issuer and senior manager. Market participants have long understood the AAU to place an obligation on the syndicate members, as parties to the agreement, to offer and attempt to sell the bonds at the initial offering prices negotiated with the issuer before the bonds begin trading.

11. In addition to the agreed-upon terms of the AAU, municipal underwriters adhere to a well-established industry practice in negotiated offerings that requires them, when part of a syndicate, to offer and attempt to sell all of the bonds at the initial offering prices for a certain period of time. These limitations are known as “syndicate restrictions,” and are generally in effect until the expiration of those restrictions. Among other things, syndicate restrictions ensure that the bonds are sold at the price which the issuer and the syndicate have agreed to sell them.

### Pricing of Municipal Bonds

12. Once the syndicate is formed, the senior manager solicits the co-managers for their views on the prices for the various bonds to be issued. The senior manager then negotiates with the issuer over the terms of the offering, specifically the maturities, interest rates, and initial offering prices for the bonds. Thereafter, the senior manager notifies the co-managers of the preliminary pricing for the bonds and the terms of the order period(s) to be held for the bonds.

13. Generally, the syndicate is the only source of pricing and other information about the bonds to be issued before and during the order period(s). Retail investors, in particular, must rely on communications from their broker-dealer, acting in the capacity of underwriter, to learn about pricing and other offering details before the bonds begin trading. Ultimately, the initial offering prices are printed on the cover page of the final disclosure document, known as the Official Statement (“OS”), which typically is released days after the bonds begin trading.

### Order Periods and the Determination of Order Priorities for Municipal Bonds

14. The “order period” in negotiated offerings is a period of time, often not longer than a few hours, during which the senior manager solicits preliminary orders known as indications of interest<sup>3</sup> from the syndicate members for municipal bonds on behalf of their

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<sup>3</sup> Indications of interest are non-binding pre-sale orders for a forthcoming issue of new municipal bonds. Although contractually such orders cannot be deemed to be executed until a bond purchase agreement is entered into by the

customers. There are two types of order periods: an initial, generally longer order period for retail customers, and a subsequent, generally shorter order period for institutional investors. Although institutions are typically precluded from participating in retail order periods, syndicate members may submit orders on behalf of retail customers during either order period.

15. Often, orders for municipal bonds exceed the amount of bonds available. Although the senior manager ultimately decides which orders will, and will not, be filled, its decision-making process is governed by written “priority provisions” which, under MSRB Rule G-11, must be established and circulated to the entire syndicate by the senior manager before the first offer of any bonds. Priority provisions, also known as the “priority of orders,” establish the sequence in which bonds will be allocated to specific order types.

16. One type of order, called a “group net” order,<sup>4</sup> typically has a higher priority and, thus, increases the likelihood that those co-managers who place them will have their order filled over competing orders. Bonds acquired in a group net order are acquired at the initial offering price. MSRB Rule G-11 requires that any syndicate member submitting an order identify whether that order is for its own dealer account, and if a “group net” order, the identity of the person for whom the order is submitted. Importantly, effective October 2010 and with some exclusions not relevant here, MSRB Rule G-11 explicitly requires that underwriters give priority to customer orders over orders for their own dealer accounts.

17. Before the AAU is executed, syndicate members typically engage in initial efforts to inform their sales force and customers of the upcoming bond offering. Once the senior manager provides preliminary pricing information, syndicate members can solicit orders from their customers and provide feedback to the senior manager, which may adjust the pricing after talks with the issuer. After the order period(s) closes, the senior manager evaluates the submitted orders, allocates bonds according to the priority provisions, and communicates the exact final prices and coupons for each maturity to the rest of the syndicate through a final pricing wire.

#### Bond Purchase Agreements, Underwriters’ Certificates, and the Lifting of Syndicate Restrictions

18. The allocation and the pricing of the municipal bonds to be issued are conditioned upon the execution of the bond purchase agreement (the “BPA”) between the issuer and the senior manager on behalf of the syndicate, which sets forth the respective responsibilities of the parties in connection with this sale, including the final negotiated price at which each bond initially will be sold to investors, known alternately as the “public offering price” or the “initial offering price.” Many BPAs include an explicit agreement by the syndicate to offer all of the bonds to be issued at the final offering price negotiated with the issuer.

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issuer and the underwriters, in reality the prospective purchases are not tentative – indications of interest are often eventually filled by the underwriters without any subsequent consultation with the purchasers.

<sup>4</sup> A “group net” order is an order made on behalf of the syndicate account, which benefits all syndicate members according to their percentage participations in the account. If allocated, a group net order is allocated at the public offering price without deducting the concession or takedown.

19. The price at which new issue bonds are sold is important for ensuring compliance with the applicable laws governing the issuance of tax-exempt and other municipal securities. To that end, the senior manager, on behalf of the entire syndicate, typically provides a certificate on the settlement date which is relied upon by bond counsel and the issuer for tax compliance purposes. This certificate is known in the industry as the “underwriters’ certificate” or the “issue price certificate.”

20. Among other things, many underwriters’ certificates include representations that the syndicate made a bona fide public offering of all of the bonds at the initial offering prices set forth in the OS, that the syndicate reasonably expected that all of the bonds would be initially sold to the public at the initial offering prices set forth in the OS at the time the bonds were purchased by the syndicate, and that at least ten percent of each maturity of the bonds was first sold to the public (subject to certain exclusions) at the initial offering prices set forth in the OS.

21. The senior manager promptly informs the syndicate once the BPA is executed, while syndicate restrictions are still in effect, so that the syndicate members can then execute the previously placed orders with their customers at the initial offering price. Afterward, the senior manager often, but not always, sends a communication to the rest of the syndicate called the “free-to-trade wire,” which lifts the various syndicate restrictions and allows syndicate members to trade the bonds at prices other than the initial offering prices.

### **The Creation of Edward Jones’ Municipal Syndicate Desk**

22. Wishman created Edward Jones’ municipal syndicate desk in 1993 so that the firm could have the opportunity to obtain better access to new issue bonds for its retail customers. Issuers often included the firm in syndicates because of the firm’s well-known, geographically-dispersed retail customer base.

23. Wishman supervised the municipal syndicate desk from its creation until 2013 and was primarily responsible for overseeing Edward Jones’ underwriting of new issue municipal bonds. She had responsibilities related to the syndicate desk’s compliance with applicable securities laws and regulations, including MSRB rules. As part of those responsibilities, she assisted in conducting an annual review of certain written supervisory procedures that applied to the municipal syndicate desk, checking for conformity with such applicable securities laws, regulations, and MSRB rules.

24. Over the years, Wishman became familiar with, and had extensive experience with, AAUs, BPAs, and underwriters’ certificates, and signed the majority of Edward Jones’ AAUs. She understood that the phrase “bona fide public offering” meant that Edward Jones was required to make the bonds available at the public offering price during the order period and that no changes could be made to that price until the syndicate restrictions were lifted.

**Wishman and Edward Jones Improperly Offered and Sold Certain  
New Issue Municipal Bonds at Prices Higher than the Initial Offering Prices**

25. Despite Wishman's experience with and knowledge of the applicable standards, from at least the beginning of the Relevant Period, she and Edward Jones' municipal syndicate desk offered and sold certain new issue municipal bonds to Edward Jones' customers at prices above the initial offering prices (the "Relevant Issuances"). Between 2009 and 2012, Edward Jones collected at least \$4.647 million in additional revenue through the sale of 156 different maturities in 75 different negotiated offerings at prices higher than the initial offering price.

26. In certain co-managed, negotiated transactions during the Relevant Period as further detailed below, Wishman improperly offered out particular bonds to customers from Edward Jones' inventory at prices above the initial offering prices while syndicate restrictions remained in effect. In these instances, Wishman typically placed orders with the lead underwriter for specific maturities for the firm's own inventory during the order period, but did not give the firm's customers an opportunity to similarly participate. Once Wishman obtained an allocation of those bonds and took them into inventory, and while syndicate restrictions remained in effect, she offered the securities to Edward Jones' customers from the firm's inventory at prices above the initial offering prices in these transactions. There is a substantial likelihood that these customers would have considered the pricing of these bonds by Wishman and Edward Jones to be significant.

27. For example, in November 2009, Edward Jones acted as a co-managing underwriter of a \$38.83 million issuance of Taxable Sales Tax Revenue Bonds, Series 2009 (the "Amarillo Bonds") by the Amarillo Economic Development Corporation. Wishman did not inform the firm's FAs about this offering until after the order period for these bonds closed, effectively foreclosing the firm's customers from having the opportunity to place orders at the initial offering price. Nevertheless, Wishman placed an order for the firm's own inventory and obtained an allocation of \$3.665 million, representing approximately 10% of the two term bonds maturing in 2019 and 2030. After the close of the order period but before the Amarillo Bonds began trading, Wishman offered the bonds out to the firm's customers at prices above the initial offering prices for those maturities.

28. In contrast to Edward Jones, the other underwriters for this deal sold their entire allocations of the 2019 and 2030 maturities at the initial offering price. Edward Jones made over \$79,000 from improperly selling as principal (that is, for its own account) the 2019 and 2030 maturities of Amarillo Bonds at prices above the initial offering prices, in addition to its share of the underwriters' discount for the transaction.

29. Normally syndicate members submit orders for their own account as "member" or "stock" orders, which have lower priority. To obtain bonds for the firm's inventory when acting as a co-manager on certain of the Relevant Issuances, Wishman sometimes placed "group net" orders with the senior managers without explicitly stating that the orders were for the firm's own dealer account, in violation of MSRB Rule G-11. Pursuant to industry practice and MSRB rules, a group net order can be placed for a dealer's own account, but it would have to be disclosed that the order was for stock, that is, for the dealer's own account. For example, although the software

platform often used by Wishman to submit orders sometimes contained a field that would have allowed her to clarify to the senior manager that the group net orders were for Edward Jones' inventory, in certain instances, Wishman failed to explicitly disclose to the senior manager, at the time of submission, that these group net orders were for the firm's inventory (i.e., the firm's dealer account). This practice of placing "group net" orders not accompanied with a disclosure that they were for the firm's own inventory had the potential to mislead certain senior managers about the true nature of the orders and may have caused them to make allocations of bonds that they otherwise would not have made.

30. In July 2010, for example, although there was a priority for retail orders, Wishman offered St. Johns, Michigan Public Schools 2010 School Building and Site Bonds, Series B (the "St. Johns' Bonds") to Edward Jones' customers at prices above the initial offering price while syndicate restrictions were in effect.

31. Despite being notified by the senior manager that Michigan retail investors had priority in the offering, Wishman and Edward Jones did not offer any of the St. Johns' Bonds to the firm's Michigan customers prior to, or during, the order period for those bonds. Instead, Wishman submitted "group net" orders for the St. Johns' Bonds to the senior manager that did not specify that the orders were for the firm's own account. On the basis of these orders, on July 15, 2010, the senior manager allocated three maturities of the St. Johns' Bonds to Edward Jones.

32. The next day, July 16, 2010, while syndicate restrictions were in effect, Wishman and Edward Jones offered out all three maturities of the St. Johns' Bonds to their customers from the firm's inventory at prices above the initial offering price. Edward Jones then sold, as principal, its entire allocation of St. Johns' Bonds to its customers out of its inventory at prices above the initial offering price. No other member of the underwriting syndicate sold the 2035 and 2040 maturities of the St. Johns' Bonds at any prices other than the initial offering price.

33. In addition to its portion of the underwriters' discount from this transaction, Edward Jones earned over \$190,000 from improperly selling St. Johns' Bonds that it had obtained as an allocation in the primary offering for prices above the initial offering prices.

34. In other negotiated offerings for which Edward Jones served as a co-managing underwriter during the Relevant Period, Wishman initially offered out the bonds at the correct initial offering prices to the firm's customers. However, in these instances, Wishman would then increase the prices of the bonds while syndicate restrictions were in effect, and would offer and sell the bonds to the firm's customers above the initial offering prices.

35. During the Relevant Period, Edward Jones offered a total of 90 bonds in 32 negotiated transactions to its customers at prices above the initial offering prices while syndicate restrictions were in effect, either through the initial offer or through a later price increase after an offer at the initial offering price.

**Wishman and Edward Jones Improperly Failed to Offer the Firm’s Customers Certain New Issue Municipal Bonds at Any Price**

36. In certain negotiated municipal offerings for which Edward Jones served as a co-manager during the Relevant Period, Wishman failed to offer the new issue bonds to Edward Jones’ customers at all before trading in those bonds began. Nevertheless, in these instances, Wishman obtained an allocation of new issue municipal bonds for Edward Jones’ own inventory during the institutional order period and then offered them to the firm’s customers at prices higher than the initial offering prices after trading began. Edward Jones thus did not provide its customers the opportunity to place orders to the syndicate account for new issue municipal bonds prior to or during the order period at the initial offering price. This is an opportunity that should have been afforded to Edward Jones’ customers because the firm was a member of the underwriting syndicate.

37. During the Relevant Period, while acting as a co-manager, Edward Jones’ municipal syndicate desk offered municipal bonds to its customers only after trading in the bonds began in a total of 29 negotiated transactions. In these transactions, the firm failed to offer a total of 45 bonds at any price before trading began. When Edward Jones ultimately did offer these particular bonds to its customers, it did so at prices above the initial offering prices.

38. In an additional 14 negotiated offerings involving 21 different bonds, Edward Jones could not produce any documentation, such as messages from its internal communication system or other communications, which would indicate its municipal syndicate desk took steps to make a bona fide offering of the municipal bonds before trading in the bonds began.

**Wishman and Edward Jones Improperly Offered and Sold Build America Bonds in Primary Offerings**

39. Wishman and Edward Jones’ municipal syndicate desk also engaged in the improper offer and sale practices discussed above in connection with a specific type of taxable municipal bond called a Build America Bond (“BAB”).<sup>5</sup> Effective between 2009 and 2010, the BAB program provided a deep federal subsidy to municipal issuers (equal to 35% of the taxable interest) in lieu of the traditional tax-exemption, and was intended to lower issuers’ net borrowing costs. In April 2009, Wishman received an IRS Notice with information about BABs.

**Nebraska Public Power District BAB Offering**

40. In 2009, Edward Jones served as a co-managing underwriter on a \$168.245 million negotiated offering of BABs and other general revenue bonds by the Nebraska Public Power District (“NPPD”). The AAU between Edward Jones and the senior manager provided that Edward Jones agreed to offer the securities at the offering price in effect at the time the

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<sup>5</sup> The American Recovery and Reinvestment Act of 2009 authorized state and local governments to issue BABs to provide liquidity for municipal financing of capital projects in the midst of the financial crisis. See Pub. L. No. 111-5, 123 Stat. 115 (2009) (enacted Feb. 17, 2009).

bonds were sold to the firm. As discussed below, however, Wishman failed to make a bona fide public offering of the NPPD BABs to the firm's customers at the initial offering prices.

41. On the morning of June 10, 2009, after Edward Jones joined the syndicate, Wishman notified the firm's financial advisors in Nebraska (the "Nebraska FAs") that the retail order period for the non-BABs series of the NPPD bonds ran until 11:00 a.m. Central Time and asked the Nebraska FAs to offer them to their customers. However, Wishman did not inform the Nebraska FAs of the details regarding the order period for the NPPD BABs, which did not have a retail priority, either before or during the order period. As a result, the Nebraska FAs therefore did not offer the BABs to their customers at that time.

42. Instead, on June 10, 2009, Wishman placed two "group net" orders for both maturities of NPPD BABs. However, the firm's "group net" orders did not explicitly state that they were for the firm's own inventory. The senior manager employee responsible for reviewing orders and making allocations of the NPPD bonds, in conjunction with the issuer, testified that he understood from the language of Edward Jones' orders that they were group net orders on behalf of Edward Jones' retail customers.

43. The senior manager filled Edward Jones' entire orders for NPPD BABs on June 10 at par. The senior manager informed Edward Jones that it had been allocated \$100,000 of the 2026 maturity and \$10 million of the 2035 maturity, and that the initial offering price was 100 (i.e., par).

44. On the afternoon of June 10, after the BABs order period closed but before syndicate restrictions were lifted, Wishman informed Edward Jones' Nebraska FAs of the NPPD BAB allocations and instructed them to offer those bonds out to customers at prices higher than the initial offering prices. Edward Jones offered the 2026 maturity of NPPD BABs at 102 and the 2035 maturity of NPPD BABs at 103, both above the initial offering price.

45. On June 11, 2009, the senior manager sent a final pricing wire to the syndicate that set the initial trading time of NPPD bonds for 2:15 p.m. Eastern Time ("ET") that day. At 2:36 p.m. ET that day, the senior manager sent a free-to-trade wire to the rest of the syndicate regarding the NPPD taxable bonds and BABs which read: "Effective immediately all syndicate terms and price restrictions are removed and the bonds are free to trade."

46. Before syndicate restrictions were lifted, Edward Jones sold \$97,000 of its \$100,000 allocation of the 2026 NPPD BABs to customers at a price of 102. Similarly, Edward Jones ticketed the sales of \$2.294 million of the 2035 NPPD BABs to customers at prices above the initial offering price (generally 103) before syndicate restrictions were lifted. Edward Jones' sales of the 2026 NPPD BABs at a price of 102 decreased the yield to customers from 6.606% to 6.323%. Its sales of the 2035 NPPD BABs at a price of 103 decreased the yield to customers from 7.399% to 6.962%.

47. In the BPA for the NPPD deal, the underwriters agreed to make a bona fide public offering of all of the NPPD bonds at prices not in excess of the initial public offering price. The underwriters' certificate for the NPPD represented that a bona fide public offering of all of the

NPPD bonds had been made at the initial offering price and that at least 10% of each NPPD maturity was sold at the initial public offering price.

48. NPPD's CFO testified that she would not have allocated any of the 2026 or 2035 NPPD BABs to Edward Jones had she known, at the time that she was making the allocations of the bonds, that Edward Jones was taking these bonds into its own inventory in order to sell to its retail customers at prices higher than the initial offering price.

49. Edward Jones' portion of the underwriters' discount from the sale of the NPPD BABs was \$18,918.55. By comparison, Edward Jones made \$292,524 from improperly selling the 2026 and 2035 NPPD maturities at prices above the initial offering price.

50. To qualify as BABs and thereby maintain the valuable tax subsidy offered by the program, new issue municipal bonds had to satisfy a number of requirements. Most importantly, a bond could not be treated as a BAB if the issue price had more than a de minimis amount of premium<sup>6</sup> over the stated principal amount of the bond.

51. On October 5, 2012, the Internal Revenue Service concluded that a portion of the NPPD 2035 BABs did not qualify as BABs because the issue price of the \$10 million principal amount that Edward Jones offered and sold (of the total \$32.89 million notional amount for that maturity) had more than a de minimis amount of premium over the stated principal amount of the bond. The IRS determined that those bonds offered and sold at prices higher than 102.25 did not qualify as BABs and were not entitled to the federal subsidy, which the NPPD had valued as worth \$260,000 per year, or approximately \$6.5 million over the BABs' stated term.

52. In July 2013, the NPPD entered into an agreement with the IRS, pursuant to which it agreed to resolve the dispute by paying \$350,000 to the IRS. In return, the NPPD was allowed to continue to claim credits under the BAB program with respect to interest paid on the 2035 BABs, and the IRS agreed not to contest such credits. Edward Jones later entered into an agreement with the NPPD pursuant to which it agreed to reimburse the NPPD the amount paid to the IRS, in addition to other expenses incurred by the NPPD over the tax-related dispute.

### **Legal Discussion**

#### **Wishman Violated Section 17(a)(3) of the Securities Act**

53. Section 17(a)(3) of the Securities Act makes it unlawful "in the offer or sale of any securities ... directly or indirectly ... to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." Negligence is sufficient to establish a violation of Section 17(a)(3); no finding of scienter is required. Aaron v. SEC, 446 U.S. 680, 696-97 (1980).

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<sup>6</sup> The "de minimis premium amount" is calculated by multiplying the number of complete years to maturity or redemption date by 0.25% of the stated redemption price at maturity. See 26 U.S.C. § 1273(a)(3). For example, if there are nine complete years before a bond can be called at 100, the de minimis premium amount would be 2.25%.

54. Wishman's practices as a co-managing underwriter of certain of the Relevant Issuances effectively denied Edward Jones' customers the opportunity to place orders to the syndicate account for new issue municipal bonds prior to or during the order periods at the initial offering prices. This opportunity should have been afforded to Edward Jones' customers because the firm was a member of the syndicate. These practices resulted in Edward Jones' customers paying more for the bonds than the issuers or senior managers intended.

55. Wishman's conduct was at least negligent. Her conduct was inconsistent with industry standards for, and written agreements governing, municipal underwriting.

56. As a result of the conduct described above, Wishman willfully violated Section 17(a)(3) of the Securities Act.

#### Wishman Was a Cause of Edward Jones' Violations of Section 17(a)(2) of the Securities Act

57. The Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. No. 101-429, 104 Stat. 931 (1990) created a distinct class of secondary liability, causing liability, and made it subject to the administrative remedy of a cease-and-desist order. Section 8A of the Securities Act and Section 21C of the Exchange Act specify that a respondent is a cause of another's violation if the respondent knew or should have known that his or her act or omission would contribute to such violation. The Commission has determined that causing liability under these statutory provisions requires findings that: (i) a primary violation occurred; (ii) an act or omission by the respondent caused the violation; and (iii) the respondent knew, or should have known, that his or her conduct would contribute to the violation. See Robert M. Fuller, 80 SEC Docket 3539, 3545 (Aug. 25, 2003), pet. denied, 2004 U.S. App. LEXIS 12893 (D.C. Cir. Apr. 23, 2004); Erik W. Chan, 77 SEC Docket 851, 859-60 (Apr. 4, 2002).

58. 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." Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. See Howard v. SEC, 376 F.3d 1136, 1141 (D.C. Cir. 2004).

59. An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. Municipal Securities Disclosure, Exchange Act Release No. 26100, 1988 WL 999989 at 20 (Sept. 22, 1988). "By participating in an offering, an underwriter makes an implied recommendation about the securities." Id. "An underwriter must investigate and disclose material facts that are known or reasonably ascertainable." Dolphin and Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (citing Municipal Securities Disclosure, Exchange Act Release No. 26100, 1988 WL 999989 at 20). "Although other broker-dealers may have the same responsibilities in certain contexts, underwriters have a 'heightened obligation' to ensure adequate disclosure." Id.

60. During the Relevant Period, through actions as discussed above, Edward Jones failed to disclose to its customers that it had agreed to make – and was expected to make under

well-established industry practice – a bona fide public offering of all the municipal bonds to be issued at the initial offering price, while acting as a co-managing underwriter in several negotiated offerings. By failing to do so, Edward Jones obtained additional revenues from the sale of new issue municipal bonds to its customers at prices above the initial offering price. These additional revenues were often greater than what the firm had contracted to earn with the municipal issuers through its share of the underwriters' discount.

61. Wishman was at least negligent. Her conduct was inconsistent with industry standards for, and written agreements governing, municipal underwriting.

62. Through the conduct described above, Wishman was a cause of Edward Jones' violations of Section 17(a)(2) of the Securities Act.

#### Wishman Violated MSRB Rule G-17

63. MSRB Rule G-17 provides in relevant part that, in the conduct of its municipal securities business, every broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.<sup>7</sup> Negligence is sufficient to establish a violation of MSRB Rule G-17.

64. As part of a dealer's fair-dealing obligation under Rule G-17, the MSRB has repeatedly interpreted the rule to create affirmative disclosure obligations. In particular, all representations made by underwriters to municipal issuers in connection with municipal securities offerings, whether oral or written (such as, for example, those made in underwriters' certificates), must be true, accurate, and must not misrepresent or omit material facts.

65. As part of multiple underwriting syndicates during the Relevant Period, Wishman misrepresented in certain BPAs and underwriters' certificates that Edward Jones would make or had made bona fide offerings of each maturity of the bonds to be issued at the initial offering prices. Municipal issuers relied on the representations of the underwriting syndicate – of which Edward Jones was a part – to establish issue price, to ensure compliance with arbitrage restrictions and other regulations for tax-exempt bonds, and to ensure qualification of the bonds as BABs. These misstatements created a risk that the municipal issuers could lose the tax-exemption for certain issuances or the federal subsidy under the BAB program.

66. Moreover, MSRB guidance interpreting the fair practice principles of MSRB Rule G-17, as they apply to the priority of orders for new issue securities and effective October 12, 2010, required that underwriters give priority of orders to customers over orders from underwriters or their related accounts. An underwriter may violate its fair dealing duties by making commitments to the issuer regarding distribution of the issuer's securities, and then failing to honor them. When acting as a co-managing underwriter in negotiated offerings during the Relevant Period, Wishman failed to honor agreements with issuers to give priority to retail

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<sup>7</sup> Subject to certain exceptions, MSRB Rule D-11 includes "associated persons" within the definitions of brokers, dealers, and municipal securities dealers for purposes of all other MSRB rules. See Wheat, First Securities, Inc., 80 SEC Docket 3406, 2003 WL 21990950, at \*8 n. 29 (Aug. 20, 2003).

orders by not, in the first instance, informing Edward Jones' retail customers of the offerings before or during the order period.

67. As a result of the conduct described above, Wishman willfully violated MSRB Rule G-17.

Wishman Violated MSRB Rules G-11(b) and (d)

68. MSRB Rule G-11(b) required every syndicate member submitting an order to the senior manager to disclose if the securities were for its dealer account or for a related portfolio, until the rule was expanded in August 2010 to apply to all brokers, dealers, and municipal securities dealers, whether or not syndicate members. Rule G-11(d) requires all group orders to include the identity of the person for whom the order is submitted.

69. While acting as a co-manager for certain of the Relevant Issuances, Wishman placed orders, including group net orders, for municipal bonds that failed to adequately disclose, at the time of submission, that the orders were for the firm's dealer account.

70. As a result of the conduct described above, Wishman willfully violated MSRB Rules G-11(b) and (d).

Wishman Violated MSRB Rule G-30(a)

71. During the Relevant Period, MSRB Rule G-30(a) required dealers to sell municipal bonds from their own account to a customer at an aggregate price (including any markdown or markup) that was fair and reasonable, taking into consideration all relevant factors, including the resulting yield to the customer, which should have been comparable to the yield on other bonds of comparable quality, maturity, coupon rate, and block size then available in the market.

72. During the Relevant Period, Wishman and Edward Jones sold new issue municipal bonds from its inventory to customers at prices that were not fair and reasonable. Because it sold new issue municipal bonds to its customers at prices above the initial offering prices, the prices at which Wishman and Edward Jones sold those securities in the initial days of trading often were above the levels at which other underwriters, and sometimes even other investors, sold the same municipal bonds. Consequently, the yields on these bonds sold to Edward Jones customers often were below the yields of the exact same bonds being sold in the market during the initial days of trading.

73. As a result of the conduct described above, Wishman willfully violated MSRB Rule G-30(a).

Wishman Was a Cause of Edward Jones' Violations of Section 15B(c)(1) of the Exchange Act

74. Section 15B(c)(1) of the Exchange Act prohibits brokers, dealers, and municipal securities dealers from using the mails or any means or instrumentality of interstate commerce to

effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any MSRB rule. Because the conduct described above was at least negligent, Wishman was a cause of Edward Jones' violations of Section 15B(c)(1) of the Exchange Act.

#### 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 the Offer by Wishman.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b), 15B(c), and 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Wishman shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act, Section 15B(c)(1) of the Exchange Act, and MSRB Rules G-17, G-11, and G-30.

B. Wishman hereby is:

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

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

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock;

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

C. Any reapplication for association by Wishman 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 Wishman, 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. Wishman shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$15,000 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. Such payment shall be made in one of the following ways:

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

2. Wishman 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. Wishman 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 Wishman 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 G. Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

By the Commission.

Brent J. Fields  
Secretary