UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78735 / August 31, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17520

In the Matter of

RBC CAPITAL MARKETS, LLC,

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 RBC Capital Markets, LLC ("RBC" 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 Respondent 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 ("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

1. This matter involves RBC's causing of Rural/Metro Corporation's violations of the proxy statement provisions of the federal securities laws in connection with the sale of Rural/Metro Corporation ("Rural") in 2011 to a private equity firm. RBC, which served as Rural's lead financial adviser for the sale, rendered a fairness opinion to Rural's board of directors that contained materially false and misleading information concerning RBC's valuation analysis. RBC caused that information to be included in the proxy statement that Rural filed to solicit shareholder approval for the sale. As a result, RBC caused Rural to violate Section 14(a) of the Exchange Act and Rule 14a-9 thereunder, which prohibits solicitation by means of a proxy statement that contains any materially false or misleading statement.

Respondent

2. RBC, a Minnesota corporation headquartered in New York, New York, is a global investment bank that provides products and services to corporations, institutional investors and other clients. RBC is registered with the Commission as a broker-dealer, investment adviser, and municipal adviser.

Relevant Entity

3. In 2011, Rural was a Delaware Corporation headquartered in Scottsdale, Arizona. Rural was founded in 1948, and its shares traded on the NASDAQ from 1993 until the sale closed. Rural is a leading national provider of medical transportation services, consisting primarily of emergency and non-emergency ambulance services to approximately 440 communities in 20 states. On June 30, 2011, Warburg Pincus LLP ("Warburg"), a private equity firm, through an affiliate, acquired Rural in a going private transaction by which the affiliate was merged with and into Rural, and Rural became owned by Warburg (hereafter referred to as the "sale" or "merger"). In connection with the sale, each publicly held Rural share converted into the right to receive $17.25 in cash and Rural's common stock was no longer listed on NASDAQ.

Background

4. In late December 2010, a Special Committee of Rural's board of directors ("Board") hired RBC to act as lead financial adviser in the possible sale of Rural. RBC saw the engagement as one that is "going to put our Healthcare services sellside effort on the map."

5. RBC stood to earn both advisory and financing fees in the sale. The advisory fees included both a fee if RBC issued a fairness opinion and a success fee if a sale was consummated. RBC also sought and obtained from Rural the right to offer staple financing to potential bidders for Rural, which offered RBC the possibility of more lucrative fees than its advisory fees.[2] As a result

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[2] Staple financing is a pre-arranged financing package offered by a sell-side investment bank to potential bidders in an acquisition. If the staple is used by a bidder, the investment bank sits on both sides of the deal, as both the financial adviser to the seller and as the lender to the bidder. The investment bank can therefore collect two sets of fees, one for the advisory role and one for the financing.

of the potential conflicts of interest created by RBC's desire to offer staple financing, counsel for the Board's Special Committee advised that "the Committee would need to be especially active and vigilant in assuring the integrity of the [sale process]".

6. On March 28, 2011, Rural announced that it had entered into a definitive merger agreement with Warburg for the sale. Shortly thereafter, stockholders filed two lawsuits challenging the merger, which were consolidated in Delaware state court. Rural's directors and its other financial adviser settled the lawsuit. RBC proceeded to trial.

7. On March 7, 2014, the Delaware Court of Chancery found RBC liable under Delaware law for conduct impacting the sale process and for disclosures in Rural's proxy statement.[3] Among other findings, the Court concluded that RBC failed to disclose certain financial incentives to Rural's Board. Those conflicts disadvantaged the timing and structure of the sale process and the Board's final approval of the merger, and were not disclosed in the proxy statement. The Court also found that RBC provided false valuation information in its fairness opinion presentation to the Board, which was later repeated in the proxy statement. That information, provided only three hours before the Board met to approve the merger, was the first valuation information the Board had requested and received during the sale process. The Court concluded that RBC aided and abetted the Board's breaches of fiduciary duty of care and disclosure, which were enabled, in part, by the Board's lack of oversight of RBC. The Court imposed monetary damages against RBC.[4] The Delaware Supreme Court upheld the Chancery Court decision on November 30, 2015.[5]

8. In light of the importance of the Commission's rules governing proxy statements, this Cease-and-Desist Order addresses RBC's conduct in causing Rural to make false and misleading statements regarding RBC's valuation analysis.

<u>RBC's False and Misleading Valuation Information in its Fairness Opinion Presentation</u>

The Bid Process Resulting in Warburg's Offer

9. The process of selling Rural commenced in December 2010 and January 2011, with RBC and a second adviser contacting over 28 private equity firms. By late January 2011, Rural received indications of interest from six firms.

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[3] *In re Rural Metro Corp. Stockholders Litig*., 88 A.3d 54 (Del. Ch. 2014) [hereinafter, "*Rural I*, 88 A.3d at _ "].

[4] The Court concluded that the sale process "did not generate for stockholders the best value reasonably attainable." *Rural I*, 88 A.3d at 102, 103. The Court found that shareholders were damaged by $4.17 per share, or $91,323,554, and assigned RBC responsibility for 83% of the damages, or $75,798,550. *In re RuralMetro Corp. Stockholders Litig.*, 102 A.3d 205 (Del. Ch. 2014). Together with pre- and post-judgment interest, RBC paid the shareholder class a total of $97,785,215.

[5] *RBC Capital Mkts., LLC v. Jervis*, 129 A.3d 816 (Del. 2015).

10. On March 22, 2011, the Special Committee's bid deadline, Rural received one bid, from Warburg, for $17 per share. Another private equity firm, which had recently won a bid to acquire Rural's primary national competitor in ambulance services, submitted an indication of interest at $17 per share, subject to further due diligence. The Board previously declined this bidder's request to extend the bid deadline to April, despite the bidder's view that it could offer a higher price based on synergies; Warburg had also told RBC that it did not want the bid deadline extended. A third firm submitted an indication of interest, which was not competitive.

11. On March 23, 2011, Rural's Special Committee and other Board members met to discuss the two proposals. RBC bankers described the two offers and the Committee ultimately decided not to engage further with the competitor's winning bidder. The Committee directed RBC and the second adviser to engage in final price negotiations with Warburg.

12. Approximately mid-day on Friday, March 25, 2011, Warburg made a best and final offer of $17.25, which expired at 9:00 a.m. on Monday, March 28, 2011.

RBC's Draft Fairness Presentation

13. In the evening of March 25, RBC's banking team set a meeting with an RBC fairness committee for the next day, Saturday, March 26, at 10 a.m., prior to a 1:00 p.m. meeting when RBC would update Rural's Board on Warburg's final bid. RBC's fairness committee at the time was *ad hoc* and involved seeking at least two investment banking managing directors who were available and willing to review and approve fairness opinions. Two managing directors were available, one of whom had not served on a fairness committee before. Over the ensuing hours, RBC bankers finalized a draft fairness presentation they had begun drafting on March 24, 2011.

14. RBC's draft fairness opinion presentation contained three valuation analyses: precedent transaction,[6] comparable company, and discounted cash flows. The precedent transaction analysis used multiples derived from prior transactions of 7.5x to 9.5x, multiplied by a pro forma adjusted EBITDA for Rural's calendar year 2010. RBC used two different pro forma adjusted EBITDA figures, one based on Rural's management's estimates (the management case) and one based on Wall Street analyst "consensus projections" (the consensus case). RBC included the "consensus" case because it purported to reflect the views of financial experts that analyzed Rural based on publicly available information. The two precedent transaction ranges showed per share valuations of $15.49 to $21.91 for the management case and $13.31 to $19.15 for the "consensus" case. Warburg's $17.25 bid was within both ranges.

15. In calculating the management and "consensus" pro forma adjusted EBITDA, RBC made adjustments to calendar year 2010 adjusted EBITDA of $69.8 million, which RBC's bankers derived from Rural's public filings. For the management case, RBC's adjustments included expense items that were publicly available, which the company considered non-recurring, as well

[6] A precedent transaction analysis is a valuation methodology that relies on publicly available information on the historical price paid for similar companies as an indicator of a company's current value. For Rural, RBC derived precedent transaction multiples from its analysis of prices paid for similar companies in the past, and applied those multiples to Rural's Adjusted EBITDA.

as other items only known by management, to arrive at management's reflection of what it believed to be the value of Rural's ongoing operations. For the "consensus" case, RBC's adjustments added back certain expenses, including at least $6.3 million of expenses recorded in Rural's financial results for the quarter ended December 31, 2010, which was Rural's second quarter of its fiscal year ending June 30, 2011 ("F2Q11").[7] Rural had released those results on February 9, 2011,[8] and Wall Street analysts considered these expenses to be non-recurring, as reflected in analysts' reports discussed further below. Members of RBC's investment banking team read the analysts' reports at the time and recognized that the analysts identified the $6.3 million as expenses that were one-time in nature. RBC's "consensus" case, adjusting for the one-time expenses, resulted in a pro forma adjusted EBITDA of $76.5 million.

16. On Saturday, March 26, 2011, RBC's banking team met with the *ad hoc* fairness committee at 10 a.m. The committee members received the 30-page fairness opinion presentation, together with the draft opinion letter, 19 minutes before the meeting.

RBC's Final Fairness Presentation Submitted to the Board

17. The fairness committee advised RBC's banking team to make changes to the fairness opinion presentation, including to the precedent transaction analysis.[9] Over the next day, RBC's bankers revised the fairness presentation, which lowered RBC's precedent transaction analysis and made Warburg's bid look more attractive.

18. RBC revised the precedent transaction analysis by lowering the "consensus" pro forma adjusted EBITDA from $76.5 million to $69.8 million, choosing not to add back the $6.3 million of one-time expenses. One of the RBC managing directors heading the banking team proposed edits to the fairness presentation by "add[ing] some bullets that say Wall Street analyst[s] do not reflect any of these one-time expenses. Something to explain why we are not adjusting."

19. As a result of this change, the fairness presentation stated that the "consensus" case reflected "consensus projections based on Wall Street research" and, additionally, that "Wall Street research analysts covering [Rural] do not make pro forma adjustments". The presentation also identified the "consensus" case as "consensus estimates". These statements were false and misleading for several reasons.

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[7] Adding back one-time expenses on a pro forma basis increased adjusted EBITDA, reflecting the view that, after adding back non-recurring expenses, Rural's normalized earnings would be at least $6.3 million higher.

[8] Rural filed a Form 8-K on February 9, 2011, containing its F2Q11 results, which were below the company's previous guidance. Despite missing their quarterly results, Rural reiterated guidance for adjusted EBITDA from continuing operations for its fiscal year 2011.

[9] The other principal change RBC made to the fairness presentation was not to rely on a comparable company analysis. That analysis only relied on a single reference company whose business was not comparable to Rural. That analysis was removed from the valuation football field but was retained in the description of the valuation methodologies RBC considered, with the notation, "Did not rely on comparable company analysis for valuation purposes."

20. First, the "consensus" $69.8 million adjusted EBITDA was Rural's actual calendar year 2010 adjusted EBITDA. It was not based on Wall Street analyst research, nor did it reflect analyst "consensus". RBC bankers computed Rural's actual adjusted EBITDA from Rural's public filings, as reflected in the bankers underlying support for the fairness presentation. No calculations exist showing analyst "consensus" adjusted EBITDA for 2010.

21. Second, analysts considered $6.3 million of expenses Rural reported in F2Q11 to be non-recurring in nature. Although the detailed models in the analysts' reports appear to reflect the company's actual results without significant adjustment, the narrative descriptions of Rural's F2Q11 results reflect that most analysts viewed the $6.3 million in expenses as one-time in nature, for which they did adjust in analyzing the company's true financial performance.

22. For example, a February 10, 2011 analyst report by one analyst firm noted:

> Solid Operational Quarter Hidden In "One-time" Charges
>
> Investors were initially spooked by RURL's F2Q11 headline results that showed Adj. EBITDA of $13.9M and EPS of $0.05. However, we didn't need to dig far into the print to find that there were several one-time items that clearly needed to be added back to produce a 'pure' operational Adj. EBITDA to match on an "apples-to-apples" basis with expectations…. Excluding the combined $6.3 million in charges, Adj. EBITDA was $20.2 million ($2.4 million ahead of Street consensus of $17.9 million), vs. the $13.9 million reported. (Emphasis in original removed.)

23. A February 10, 2011 analyst report by another analyst firm also noted that:

> One-Time Charges Mask Strong F2Q11 Operating Results
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> On a pro forma basis the company outperformed expectations, posting EPS of $0.20, as one-time expenses of $6.3 mm accounted for ($0.15) during the quarter…. Despite the one-time expense items management maintained their guidance of FY11 EBITDA range of $74.0-$76.0 mm. On a pro forma basis, excluding one-time items, FY 11 EBITDA should be in the range of $80.3-$82.3mm, significantly higher than management's guidance.
>
> One-time item details. The company's one-time items during F2Q11 included a $4.9 mm charge related to historical insurance claims estimates . . .; $800K in executive relocation expenses . . .; and $600K in debt refinancing fees. . . . These charges are all non-recurring in nature, although we caution that insurance claims can occur irregularly. (Emphasis in original removed.)

24. A February 10, 2011 analyst report by yet another analyst firm, which discussed the one-time expenses, noted that Rural's earnings release "exceeded expectations after adjusting for certain 1x items."

25. Third, the fairness presentation's use of the terms consensus "projections" and "estimates" to describe the "consensus" case suggests that RBC's adjusted EBITDA calculation is

based on how analysts viewed the $6.3 million expense items in their projections. In fact, the projections analysts used to set their price targets, which are based on their estimates for fiscal year 2012, show that most analysts viewed the largest of these expenses (the $4.9 million relating to historical insurance claims) as non-recurring; the smaller one-time expenses are not apparent in the analysts' detailed projection models. For example, the model of the RBC analyst covering Rural shows that its projections normalized and excluded additional insurance expense related to historical claims.

26. In addition to lowering the "consensus" 2010 adjusted EBITDA from $76.5 million to $69.8 million, the fairness presentation changed the low-end multiple of the precedent transaction analysis from 7.5x to 6.3x. The 6.3x multiple was based on a seven-year old acquisition of Rural's only publicly traded competitor in 2004. This change was inconsistent with RBC's prior views expressed during its engagement and in the pitch book it provided to the Special Committee in December 2010 when RBC was seeking to become the lead adviser to sell Rural.

27. As a result of these changes, RBC lowered the "consensus" precedent transaction range of $13.31 to $19.15 per share from its draft presentation to $8.19 to $16.71 per share, entirely below Warburg's $17.25 offer.

28. On Sunday, March 27, 2011, RBC's banking team provided the *ad hoc* committee the revised version of the fairness presentation. One of the committee members asked a question, which was unrelated to the changes described above, and signed off. The other committee member signed off without reading the presentation.[10]

29. Later in the evening on March 27, RBC's deal team provided its fairness opinion materials to Rural's Board prior to the expiration of Warburg's offer at 9:00 a.m. the following morning. The Board approved the sale shortly after midnight, less than three hours after receiving RBC's fairness presentation materials. RBC's fairness materials, together with the fairness opinion of the second adviser presented at the meeting, were the only valuation materials Rural's Board requested and received since the sale process commenced three months earlier.

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[10] RBC made changes to its internal fairness opinion committee process after the Rural transaction. RBC now requires three (not two) of the managing directors from the mergers and acquisitions group to sit on the committee and encourages additional managing directors, including industry heads, to participate to provide additional expertise. Members of the committee are now required to declare that they reviewed the final fairness opinion materials and that any requested changes have been made, and to clear the materials for issuance. Fairness opinion presentation materials are also required to be distributed to the committee members a day in advance of the committee meeting, absent exigent circumstances.

RBC's False and Misleading Valuation Information in the Proxy Statement

30. RBC's purported use of "consensus projections" in its precedent transaction analysis was subsequently repeated in Rural's April 18, 2011 preliminary proxy statement and its May 26, 2011 definitive proxy statement. The summary of RBC's analysis states that RBC used Wall Street research analyst "consensus projections" for Rural's 2010 adjusted EBITDA when it applied the multiples from the precedent transactions: "RBC then applied the following multiple ranges to the Company's Adjusted EBITDA for calendar year 2010, or CY 2010, based on Wall Street research analyst consensus projections, referred to as CY 2010 Adjusted EBITDA (Consensus) .. . ." This statement is false. As discussed above, RBC used Rural's actual CY 2010 Adjusted EBITDA of $69.8 million, which was not based on analyst research or "consensus projections". Nor did that figure add back the $6.3 million of one-time expenses, which was contrary to analysts' views.

31. This false statement was also misleading. The related disclosures of RBC's precedent transaction analysis define "Adjusted EBITDA" for the precedent target companies as being adjusted to account for certain one-time expenses. Although the "consensus" Adjusted EBITDA that RBC used is not disclosed in RBC's valuation summary, elsewhere the proxy statement identifies Rural's calendar year 2010 Adjusted EBITDA as $76.8 million, with a footnote explaining that the figure adds back one-time expenses. A reasonable shareholder reading the proxy statement would be led to believe that RBC used the $76.8 million 2010 Adjusted EBITDA for its precedent transaction analysis, and that the resulting number was consistent with Wall Street "consensus projections."

32. RBC provided to Rural the summary of its valuation analyses for inclusion in the proxy statement. RBC investment bankers involved in preparing RBC's fairness opinion presentation reviewed the preliminary and definitive proxy statements before they were filed, without making changes to the false and misleading disclosures discussed above.[11]

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[11] The definitive proxy statement also contained a description of RBC's comparable company analysis, under the heading "Other Factors". RBC initially included this disclosure in RBC's internal draft of the preliminary proxy statement, but removed it from the final draft after RBC banking team members noted that RBC did not rely on the comparable company analysis for valuation purposes, as stated in its fairness presentation to the Board. Nevertheless, on the advice of outside counsel, the disclosure was added back into the definitive proxy statement, in an attempt to appease plaintiffs after stockholder litigation was filed. This disclosure is misleading. Immediately following the disclosure, the proxy statement states: "The foregoing summary describes all the analyses and factors that RBC deemed material in its presentation to the Board of Directors…. RBC believes that its analyses must be considered as a whole and that considering any portion of such analyses and of the factors considered without considering all of such analyses and factors could create a misleading view of the process underlying the opinion." A proxy adviser interpreted RBC's comparable company analysis as indicating that Rural was "valued lower than its most comparable peer" and that Warburg's bid was "consistent with, or more attractive than, the multiples of the selected peer."

33. RBC earned $500,000 from Rural for issuing its fairness opinion. Pursuant to RBC's engagement letter with Rural, the success fee RBC earned upon completion of the transaction was separate from and not contingent on RBC's issuance of a fairness opinion.

34. On June 30, 2011, the sale closed, with each publicly held share of Rural common stock converted into the right to receive $17.25 in cash.

Violations of Section 14(a) and Rule 14a-9 of the Exchange Act

35. As a result of the conduct described above, RBC caused violations of Section 14(a) of the Exchange Act and Rule 14a-9 thereunder by Rural, which prohibit the solicitation by means of any proxy statement that contains any materially false or misleading statement.

IV.

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

Accordingly, it is hereby ORDERED that**:**

A. Pursuant to Section 21C of the Exchange Act, Respondent RBC cease and desist from committing or causing any violations and any future violations of Section 14(a) of the Exchange Act and Rule 14a-9 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay disgorgement of $500,000 and prejudgment interest of $77,759, or $577,759, plus a civil money penalty in the amount of $2,000,000, for a total payment of $2,577,759, 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 of the disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

C. 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 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 Timothy N. England, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

D. 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.

By the Commission.

Brent J. Fields
Secretary