

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81475 / August 24, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4758 / August 24, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18139

In the Matter of

**MUNICIPAL FINANCE
SERVICES, INC.; RICK A.
SMITH; AND JON G. WOLFF**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15B(c) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, AND SECTION 203(e) OF THE
INVESTMENT ADVISERS 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 15B(c) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”), against Municipal Finance Services, Inc. (“MFSOK”), Rick A. Smith (“Smith”), and Jon G. Wolff (“Wolff”).

II.

In anticipation of the institution of these proceedings, MFSOK, Smith, and Wolff (collectively “Respondents”) have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for 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 15B(c) and 21C of the Securities Exchange Act of 1934, and Section 203(e) of the Investment Advisers 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 finds¹ that:

Summary

1. These proceedings arise out of the breach of fiduciary duty by Municipal Finance Services, Inc. ("MFSOK"), a municipal advisor based in Edmond, Oklahoma, and its associated persons Rick A. Smith and Jon G. Wolff.
2. In 2011, a municipal entity (the "City") hired MFSOK to serve as its municipal advisor. Pursuant to a written agreement, MFSOK was responsible for preparing the City's official statements for municipal bond offerings, reviewing and commenting on all legal documents related to the issuance of the bonds, and assisting the City in complying with its continuing disclosure agreements. Smith, the president of MFSOK, and Wolff, the vice president, both provided advice to the City on behalf of MFSOK.
3. In May 2013, the City issued its Series 2013 Bonds and executed a continuing disclosure agreement in connection therewith (the "2013 CDA"). At the time of the 2013 bond offering, the City had three outstanding bond issues from 2005, 2008 and 2012. In connection with each of those bond issuances, the City executed a continuing disclosure agreement for the benefit of the investors in such offering. Among other things, each of those continuing disclosure agreements provided that the City would submit audited financial statements and other financial information ("annual reports") to the appropriate repositories² within 180 days after the end of the City's fiscal year. The 2013 CDA, however, included an amendment to those prior continuing disclosure agreements, which purported to extend the City's submission deadline to 360 days. The result was that investors in those earlier bond offerings would not receive updated financial information from the City within the time period originally promised.
4. The 2013 amendment failed to meet certain prerequisites expressly required by the City's prior continuing disclosure agreements. Respondents failed to advise their client of the prerequisites for amendments in the 2005, 2008 and 2012 continuing disclosure agreements and failed to ensure that their client was in compliance with those continuing disclosure agreements. After the amendment was executed, MFSOK also failed to advise the City to submit the amendment

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 Prior to July 1, 2009, municipal issuers and obligated persons made continuing disclosure submissions within a decentralized system of private electronic repositories called the Nationally Recognized Municipal Securities Information Repository system. In December 2008, Exchange Act Rule 15c2-12 was amended to designate the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system as the central repository for continuing disclosures.

to EMMA until three years later. As a result of these failures, investors holding the 2005, 2008 and 2012 bonds, who had been promised the City's annual reports within 180 days, were not informed of the new 360-day deadline until three years after the amendment purportedly took effect.

5. As a result of the conduct described above, MFSOK breached its fiduciary duty to the City in violation of Section 15B(c)(1) of the Exchange Act, and Smith and Wolff were the cause of MFSOK's violation.

Respondents

6. **MFSOK**, an Oklahoma corporation located in Edmond, Oklahoma, is registered with the Commission and the Municipal Securities Rulemaking Board as a municipal advisor. MFSOK has been registered as an investment adviser with the state of Oklahoma since 1990.

7. **Rick A. Smith**, age 62, is a resident of Edmond, Oklahoma. Smith is the founder and president of MFSOK.

8. **Jon G. Wolff**, age 55, is a resident of Edmond, Oklahoma. Since approximately 2001, Wolff has been vice president of MFSOK.

Facts

9. A continuing disclosure agreement ("CDA") is an agreement which is executed by a municipal issuer in connection with an offering of municipal bonds. Exchange Act Rule 15c2-12 requires a participating underwriter in a primary offering of municipal securities to reasonably determine that an issuer of municipal securities has undertaken, in a written agreement for the benefit of investors, to provide to the Municipal Securities Rulemaking Board ("MSRB") annual financial information and notice of certain events. See 17 C.F.R. § 240.15c2-12(b)(5)(i). Underwriters comply with this requirement by having the issuer enter into a written agreement commonly referred to as a CDA, pursuant to which the issuer undertakes to provide the required annual financial information and event notices to the MSRB in a manner consistent with the Rule. Absent the availability of an exemption from the Rule, a CDA is typically executed in connection with each primary offering of municipal securities.

10. One of the purposes of Rule 15c2-12 is to encourage the dissemination of secondary market disclosure so that investors can better protect themselves from misrepresentation or other fraudulent activities. A lack of consistent secondary market disclosure impairs investors' ability to acquire information necessary to make intelligent, informed investment decisions, and thus, to protect themselves from fraud. See Municipal Securities Disclosure, Exchange Act Release No. 34961, 1994 SEC LEXIS 3508, at *8 (Nov. 10, 1994) ("1994 Adopting Release"). Moreover, the timeliness of financial information is a major factor in its usefulness. See Report on the Municipal Securities Market at 74 (July 31, 2012)

(“2012 Municipal Report”);³ Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others, Exchange Act Release No. 34-33741, at note 60 (Mar. 9, 1994).

11. In the 1994 Adopting Release, the Commission stated that CDAs would be meaningless if issuers and obligated persons could unilaterally amend them. See 1994 Adopting Release, 1994 SEC LEXIS 3508, at *59. In 1995, Commission staff issued guidance concerning the amendment of CDAs. See National Association of Bond Lawyers, SEC No-Action Letter, 1995 SEC No-Act. LEXIS 563 at *4-5 (June 23, 1995) (“NABL 1”). That guidance reiterated that amendments to CDAs may not be made unilaterally by an issuer or any other party, set forth guidelines for amending CDAs consistent with the requirements of Rule 15c2-12, and anticipated that such amendments would not be made often.⁴ In fact, amendments to CDAs are unusual.

12. The City issued bonds in 2005 and 2008. Consistent with the requirements of Rule 15c2-12, the City executed CDAs in connection with each of those bond offerings. The CDAs required, among other things, that the City submit its annual reports to the appropriate repositories no later than 180 days after the end of its fiscal year.

13. In July 2011, the City retained MFSOK to serve as its municipal advisor. Smith prepared and Wolff signed a financial advisor services agreement with the City which provided that MFSOK would, among other things, assume responsibility for reviewing and commenting on all legal documents related to the issuance of the bonds, and assist the City in complying with the submission of annual reports and financial information to comply with any continuing disclosure agreement requirements in accordance with applicable federal rules and regulations.

14. Beginning in late 2011, MFSOK began assisting the City with the submission of annual reports on EMMA to comply with the City’s 2005 and 2008 CDAs. In 2012, MFSOK assisted the City with the issuance of its Series 2012 Bonds through a competitive sale. The City executed a newly-formatted 2012 CDA prepared by bond counsel, which again required that the City submit its annual reports no later than 180 days after the end of its fiscal year.

15. Each of the CDAs executed by the City in 2005, 2008 and 2012 contained specific provisions limiting the ability of the City to amend them. Among other things, the 2005 and 2008

³ <https://www.sec.gov/news/studies/2012/munireport073112.pdf>

⁴ The staff guidance provided that a CDA that includes an amendment provision may satisfy the requirements of Rule 15c2-12 if the following conditions are included: (a) the amendment may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the obligated person, or type of business conducted; (b) the undertaking, as amended, would have complied with the requirements of the rule at the time of the primary offering, after taking into account any amendments or interpretations of the rule, as well as any change in circumstances; and (c) the amendment does not materially impair the interests of holders, as determined either by parties unaffiliated with the issuer or obligated person (such as the trustee or bond counsel), or by approving vote of bondholders pursuant to the terms of the governing instrument at the time of the amendment. See NABL 1; see also 1994 Adopting Release.

CDAs expressly provided that they could be amended only with (1) bondholder consent; or (2) an opinion of bond counsel that the amendment would not materially impair the interests of bondholders.⁵ The 2005 and 2008 CDAs also required that the bond counsel opinion and the amended CDA be submitted to the appropriate repositories. The 2012 CDA did not provide for amendment by bondholder consent, but did require a determination by bond counsel or the paying agent that the amendment does not materially impair the interest of bondholders. Moreover, each of the CDAs required the timely submission of material event notices upon the occurrence of a modification to the rights of bondholders.

16. In 2013, MFSOK provided advice to the City in connection with the issuance of its Series 2013 Bonds through a competitive sale. In connection with the 2013 offering, and relying in part on MFSOK's advice, the City executed the 2013 CDA prepared by bond counsel, who is now retired and no longer practicing law. The 2013 CDA followed the format of the 2012 CDA. Unlike the prior CDAs, however, the 2013 CDA provided that the City would submit its annual reports to EMMA no later than 360 days after the end of its fiscal year. In addition, the 2013 CDA purported to amend all of the City's prior CDAs by extending the deadline for the submission of annual reports for those issuances from 180 days to 360 days. The amendment had the effect of delaying significantly the date by which investors in the 2005, 2008 and 2012 bonds had access to the City's annual reports. As a result, some investors in the earlier bonds engaged in transactions without the benefit of the updated financial information contained in the annual reports that had been promised in the CDAs for those bonds.

17. The 2013 amendment failed to meet the requirements for amending the 2005, 2008, and 2012 CDAs because the City had obtained neither the consent of prior bondholders, nor an opinion or determination of bond counsel or the paying agent that the amendment would not materially impair the interests of such bondholders.

18. Prior to the sale of the Series 2013 Bonds and pursuant to MFSOK's contractual responsibility to review and comment on legal documents for the Series 2013 Bonds, Smith and Wolff reviewed a draft of the 2013 CDA and provided comments on it. Neither Smith nor Wolff had ever seen such an amendment before and they both had concerns about it when they reviewed the draft CDA. Despite their concerns, they did not take any action. They did not comment on the amendment provisions, did not conduct further investigation and did not seek further information from bond counsel or otherwise attempt to determine whether the amendment complied with the terms of the City's three prior CDAs. Smith and Wolff also did not advise the City of their concerns regarding the amendment. On March 26, 2013, MFSOK recommended that the City sell the Series 2013 Bonds to an underwriter pursuant to an official statement that incorporated a summary of the 2013 CDA as an exhibit.

19. Respondents also failed to advise the City of its obligation under the 2005 and 2008 CDAs to notify bondholders of the 2013 amendment in a timely manner by submitting the

⁵ The amendment provisions in the City's prior CDAs were consistent with longstanding SEC staff guidance and industry standards for the amendment of CDAs.

amendment to the appropriate repositories. MFSOK did not submit the 2013 amendment to EMMA on behalf of the City until 2016, when the City was preparing to issue another series of bonds. Respondents also failed to consider whether the 2013 amendment constituted a modification to the rights of bondholders and, if so, whether the City should submit a material event notice to EMMA.

Violations

20. Municipal advisors include financial advisors who assist municipal entities with bond offerings, reinvestment of bond proceeds and the structuring and pricing of related products. See 2012 Municipal Report at 45. In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which included provisions for the registration and regulation of municipal advisors. The adopting release for the registration rules explains that the municipal advisor registration requirements and regulatory standards were intended to mitigate some of the issues observed with the conduct of some municipal advisors, including advice rendered without adequate training or qualifications. See Registration of Municipal Advisors, SEC Release No. 34-70462 (Sept. 20, 2013).

21. Section 15B(c)(1) of the Exchange Act imposes upon municipal advisors and their associated persons a fiduciary duty to their municipal entity clients, and prohibits them from engaging in any act, practice or course of business that is not consistent with their fiduciary duty. Fiduciaries must act in the utmost good faith and use reasonable care to avoid misleading clients. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963).

22. As a result of the conduct described above, MFSOK willfully⁶ breached its fiduciary duty set forth in Section 15B(c)(1) of the Exchange Act. Smith and Wolff caused MFSOK's violation of Section 15B(c)(1) of the Exchange Act.

Undertakings

MFSOK undertakes to:

23. Within 180 days of the entry of this Order, establish appropriate written policies and procedures and periodic training regarding the fiduciary duty owed by municipal advisors under the federal securities laws, including the provision of advice concerning an issuer's continuing disclosure obligations. Such written policies and procedures shall include the designation of an individual or officer at MFSOK responsible for ensuring compliance by Respondents with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of such training.

⁶ 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)).

24. 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.

25. Certify, in writing, compliance with the undertakings 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's staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Ivonia Slade, Assistant Director, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, 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.

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 15B(c) and 21C of the Exchange Act and Section 203(e) of the Advisers Act as to MFSOK, and pursuant to Section 21C of the Exchange Act as to Smith and Wolff, it is hereby ORDERED that:

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

B. Respondent MFSOK is censured.

C. MFSOK 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 accordance with paragraph IV.F below.

D. Rick A. Smith shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$8,000 to 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 accordance with paragraph IV.F below.

E. Jon G. Wolff shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$8,000 to 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 accordance with paragraph IV.F below.

F. Payments from the Respondents 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 by name 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 Ivonia Slade, Assistant Director, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

G. 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 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.

H. Respondents shall comply with the undertakings enumerated in paragraphs 23 through 25 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 Smith and Wolff, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Smith and Wolff 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 Smith and Wolff 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