UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10529 / August 14, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 83838 / August 14, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18639

In the Matter of **CHARLES KERRY MORRIS,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 15(b), 15B(c), AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 15(b), 15B(c), and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Charles Kerry Morris ("Morris" 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, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b), 15B(c), and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings arise out of fraudulent conduct perpetrated by Morris, the head of municipal underwriting, sales, and trading at registered broker-dealer NW Capital Markets Inc. ("NW Capital"), with NW Capital customer James P. Scherr and his firm, Core Performance Management, LLC ("Scherr and CPM"). As discussed below, Scherr and CPM engaged in a market practice called "flipping." In the municipal bond context, flipping involves obtaining allocations of new issue municipal bonds from underwriters and then immediately re-selling or "flipping" the bonds at a profit once trading begins.[2]

2. Between February 2009 and June 2012, Morris accepted undisclosed and improper payments from Scherr and CPM in exchange for Morris's agreement to purchase new issue bonds from Scherr and CPM. Once he had taken the bonds into NW Capital's inventory, Morris then re-sold the bonds.

3. In addition, while acting as an underwriter for new bonds at NW Capital, Morris engaged in a "parking" scheme with Scherr and CPM.[3] Between May 2012 and September 2014, Morris allocated certain new issue bonds to Scherr and CPM as part of offerings underwritten by NW Capital, with the understanding that Morris would buy the bonds back into NW Capital's inventory. In exchange, Morris agreed to pay Scherr and CPM a higher price than Scherr and CPM paid for the bonds. These "parking" transactions created the false appearance of a sale when, in fact, Morris was effectively retaining control of the bonds, and was therefore able to sell them again in the secondary market.

4. In addition, Morris placed orders with Scherr and CPM to obtain new issue bonds that Scherr and CPM had obtained from other underwriters. Scherr and CPM were acting as

[1] The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

[2] The Municipal Securities Rulemaking Board ("MSRB") defines "flipping" as the immediate resale of allotted bonds in a primary offering, which may involve a prearranged trade, where the initial purchaser does not intend to hold the bonds for investment purposes but instead expects to make a profit from such immediate resale.

[3] The MSRB defines "parking" as a practice, in violation of securities industry rules, consisting of selling securities to a customer and, at the same time, agreeing to repurchase the securities at a future date with an unbooked transaction (with the transaction later booked as an ostensibly unrelated trade). The term "parking" is used generally to refer to an arrangement in which "a person 'sells' securities to a purchaser subject to an agreement or understanding that the seller will repurchase the securities at a later time at a price that leaves the economic risk with the seller." Thomas C. Gonnella, S.E.C. Rel. No. 34-78532, Comm. Op., 2016 WL 4233837, at *17 n.26 (Aug. 10, 2016) (internal citations omitted).

brokers because they were in the business of regularly soliciting, accepting and executing orders for the purchase and sale of securities from others for which they received transaction-based compensation. Neither Scherr nor CPM was registered with the Commission as a broker at the time of these transactions. Morris's conduct in buying from and selling to Scherr and CPM was a cause of Scherr and CPM's unregistered broker activity.

5. As a result of the conduct described herein, Morris willfully violated Sections 17(a)(1) and (3) of the Securities Act, Sections 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, and MSRB Rule G-17, and caused violations of Section 15(a)(1) of the Exchange Act.

Respondent

6. **Charles Kerry Morris**, age 63, resides in Manasquan, New Jersey. He joined NW Capital in 2004 and, until December 31, 2017, was a Managing Director, primarily responsible for underwriting, sales, and secondary market trading of municipal securities.

Related Entities and Individual

7. **NW Capital Markets Inc.**, incorporated in Delaware and headquartered in Hoboken, New Jersey, is registered with the Commission as a broker-dealer.

8. **James P. Scherr**, age 61, resides in Boca Raton, Florida. Scherr was majority owner and managing director of Core Performance Management, LLC and at all relevant times controlled CPM.

9. **Core Performance Management, LLC** ("CPM"), founded by Scherr, was a Florida LLC located in Boca Raton that was dissolved as of July 27, 2016. CPM primarily bought and sold new issue bonds and was never registered with the Commission.

Background

10. Municipalities often raise money by issuing municipal bonds to the public. Many of those bonds are sold to the public through a "negotiated" bond offering. In a negotiated bond offering, the municipal issuer selects a broker-dealer firm to act as the bonds' underwriter and sell the bonds to the public.[4] The underwriter negotiates with the municipal issuer to determine the price at which the new municipal bonds should be offered. The underwriter has an obligation to make a bona fide offering of the bonds to the public at that initial offering price.

[4] The selected broker-dealer firm may act as the sole underwriter for a particular offering, or may be the lead underwriter (also sometimes referred to as the senior manager) among a group of broker-dealers, which is known as an underwriting syndicate.

11. Often, preliminary orders from customers for new municipal bonds exceed the amount of bonds available for sale. When a bond offering is oversubscribed, customer orders are typically prioritized over orders from broker-dealers, with the result that broker-dealer firms are often unable to purchase bonds in the initial offering.

Morris's Trading with Scherr and CPM

12. Morris had a long-standing relationship with Scherr and understood that Scherr operated a securities trading business known as "flipping" and was known in the industry as a "flipper." "Flipping" is the immediate resale of new issue bonds, where the initial purchaser does not intend to hold the bonds for investment purposes but instead expects to make a profit from that immediate resale. The resale may be prearranged with the subsequent purchaser before the flipper makes the initial purchase of bonds.

13. Scherr and CPM's flipping business involved soliciting orders from and prearranging trades with broker-dealer firms to purchase new issue municipal bonds that Scherr and CPM planned to purchase from underwriters in new bond offerings. Broker-dealer firms placed orders with Scherr and CPM because they were typically unable to purchase the bonds directly from the underwriter, for the reasons noted above.

14. As part of their business, Scherr and CPM solicited broker-dealer firms to place preliminary orders for new municipal bonds with them.[5] They then placed orders for the bonds with the underwriter for the bond offering. If they successfully obtained the new issue bonds, they immediately resold the bonds to the firms that had placed preliminary orders with them. Scherr and CPM charged those broker-dealer firms (which were their own customers) a fee on the sale of those bonds. Scherr and CPM were acting as brokers because they were in the business of regularly soliciting, accepting and executing orders for the purchase and sale of securities from others for which they were receiving transaction-based compensation. Neither Scherr nor CPM has ever been registered with the Commission as a broker.

15. While employed at NW Capital, Morris placed orders with, and purchased new issue bonds from, Scherr and CPM.

16. In addition, when Morris and NW Capital were underwriting new bond offerings, Morris also frequently accepted orders from Scherr and CPM for bonds. In accepting Scherr and CPM's orders for bonds, Morris understood that Scherr and CPM were placing those orders on behalf of others, including other broker-dealer firms.

[5] The orders the broker-dealer firms placed with Scherr and CPM were preliminary in the sense that Scherr and CPM typically had not yet obtained the new bonds at the time of the order and therefore did not yet have them available to sell.

Morris's Agreement to Receive Payments for Trades

17. In or around 2008 or 2009, Morris and Scherr came to an understanding, pursuant to which Morris placed orders for and purchased newly issued bonds from Scherr and CPM for NW Capital's account, in some cases at above-market prices, in exchange for a kickback of some of Scherr and CPM's profits. Scherr agreed to pay Morris a percentage of the profit Scherr and CPM made on the transactions.

18. To conceal this scheme, between February 2009 and June 2012, Scherr paid Morris by writing checks through CPM, made out to an intermediary.

19. Morris and Scherr ended the payment scheme by June 2012.

20. Throughout the relevant period, Morris failed to disclose the kickback scheme and payments to NW Capital.

Morris "Parked" Certain Bonds Underwritten by NW Capital

21. In certain offerings underwritten by NW Capital between May 2012 and September 2014, Morris engaged in unlawful parking transactions with Scherr and CPM. In these transactions, Morris allocated and sold bonds to Scherr and CPM with the understanding that Scherr and CPM would temporarily hold the bonds for a short period of time (typically one business day or less) until Morris bought them back into NW Capital's inventory. Morris bought back the bonds at higher prices, thereby guaranteeing that Scherr and CPM would make a profit. The prearranged nature of these trades meant that the market risk of owning the bonds never actually passed to Scherr and CPM.

22. Some of these parking transactions occurred during the period when Morris had the undisclosed payment arrangement with Scherr and CPM and resulted in payments to Morris. For example, in May 2012, while NW Capital was acting as the sole underwriter on an offering of new bonds, Morris sold $4.2 million of the bonds to Scherr and CPM. Morris repurchased all of those bonds from Scherr and CPM the same day, resulting in a profit to both Morris and Scherr and CPM.

23. Even after their payment scheme came to an end, Morris continued to park bonds underwritten by NW Capital with Scherr and CPM. In August 2013, for example, when NW Capital was serving as the sole underwriter for an offering, Morris sold $1.45 million of new bonds to Scherr and CPM, only to repurchase them all the same day at a higher price, resulting in a profit to Scherr and CPM.

24. NW Capital's written supervisory policies and procedures prohibit "parking" securities, which NW Capital broadly defines as "an illegal practice intended to hide the real beneficial ownership of the securities," comprising "a variety of schemes that violate securities laws." Morris knew or should have known of NW Capital's prohibition against parking.

Legal Discussion

Morris Violated the Antifraud Provisions of the Securities Act and the Exchange Act and MSRB Rule G-17 By Engaging in the Payments Scheme With Scherr and CPM

25. Section 17(a) of the Securities Act prohibits any person, in the offer or sale of a security, from directly or indirectly, (1) employing any device, scheme, or artifice to defraud; or (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. 15 U.S.C. § 77q(a).

26. Section 10(b) and Rule 10b-5 thereunder prohibit any person, in connection with the purchase or sale of any security, from directly or indirectly: (a) employing any device, scheme, or artifice to defraud; or (c) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

27. To establish a violation of Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, the Commission must prove that the defendant acted with scienter. Aaron v. SEC, 446 U.S. 680, 695 (1980). Scienter has been defined as "a mental state embracing intent to deceive, manipulate, or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976). Scienter can be established by knowledge or recklessness. See SEC v. Infinity Grp. Co., 212 F.3d 180, 192 (3d Cir. 2000); accord SEC v. Cooper, 142 F. Supp. 3d 302, 313 (D.N.J. 2015).

28. Negligence is sufficient to establish a violation of Section 17(a)(3); no finding of scienter is required. Aaron, 446 U.S. at 696-97.

29. MSRB Rule G-17 provides that, in the conduct of its municipal securities business, every broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.[6] Negligence is sufficient to establish a violation of MSRB Rule G-17. See Wheat, First Securities, Inc., Exch. Act Rel. No. 48378, 80 SEC Docket 3406, 3425 (Aug. 20, 2003); see also SEC v. Dain Rauscher, Inc., 254 F.3d 852, 856 (9th Cir. 2001).

30. Morris violated Sections 17(a)(1) and (3) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rules 10b-5(a) and (c) thereunder by knowingly engaging in a fraudulent scheme to purchase newly issued municipal bonds from Scherr and CPM in exchange for undisclosed and improper payments, and then resell those securities, as discussed above.

31. Morris violated his duty of fair dealing under MSRB Rule G-17 by (i) engaging in the scheme with Scherr and CPM to purchase newly issued municipal bonds from him in exchange

[6] 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).

for a kickback and (ii) by failing to disclose to NW Capital the kickback scheme with Scherr and CPM.

Morris Violated the Antifraud Provisions of the
Securities Act and the Exchange Act and MSRB Rule G-17 By Parking Bonds

32. "Parking" refers generally to an unlawful arrangement in which "a person 'sells' securities to a purchaser subject to an agreement or understanding that the seller will repurchase the securities at a later time at a price that leaves the economic risk with the seller," in violation of Section 17(a) of the Securities Act and Rule 10b-5(a) and (c) of the Exchange Act. Thomas C. Gonnella, S.E.C. Rel. No. 34-78532, Comm. Op., 2016 WL 4233837, at *17 n.26 (Aug. 10, 2016) (internal citations omitted).

33. As a result of the parking conduct described above, Morris willfully violated Sections 17(a)(1) and (3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities. In addition, Morris violated his duty of fair dealing by engaging in this parking scheme with Scherr and CPM in violation of MSRB Rule G-17.

Morris Caused Violations of Section 15(a)(1) of the Exchange Act

34. To establish causing liability, the Commission must find: (1) a primary violation; (2) the respondent's act or omission contributed to the violation; and (3) the respondent knew or should have known that the act or omission would contribute to the violation. See 15 U.S.C. § 78u-3(a); Robert M. Fuller, 56 S.E.C. 976, 984 (2003), pet. denied, 95 F. App'x 361 (D.C. Cir. 2004). Negligence is sufficient to establish "causing" liability, at least in cases where a person is alleged to "cause" a primary violation that does not require scienter, such as Section 15(a)(1) of the Exchange Act. VanCook, Rel. No. 34-61039A (Nov. 20, 2009) (Opinion of the Commission) (quoting KPMG Peat Marwick LLP, S.E.C. 1135, 1175 (2001)), pet. denied, 289 F.3d 109 (D.C. Cir. 2002).

35. Under Section 15(a)(1) of the Exchange Act, it is unlawful for a broker or dealer "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security . . . unless such broker or dealer is registered" with the Commission pursuant to Section 15(b) of the Exchange Act. Under Section 3(a)(4)(A) of the Exchange Act, a "broker" is "any person engaged in the business of effecting transactions in securities for the account of others."

36. The Exchange Act's definition of "broker" "connote[s] a certain regularity of participation in securities transactions at key points in the chain of distribution." Mass. Fin. Serv., Inc. v. Sec. Inv. Prot. Corp., 411 F. Supp. 411, 415 (D. Mass. 1976), aff'd, 545 F.2d 754 (1st Cir. 1976); see also SEC v. Martino, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003).

37. Scherr and CPM violated Section 15(a)(1) of the Exchange Act because they were acting as brokers without being registered with the Commission.

38. Morris's purchase of bonds from, and sale of bonds to, Scherr and CPM contributed to the operation of Scherr and CPM as unregistered brokers. Morris knew, or should have known, that Scherr and CPM were not registered with the Commission.

39. As a result of the conduct described above, Morris caused violations of Section 15(a)(1) of the Exchange Act by Scherr and CPM.

IV.

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

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

A. Respondent Morris cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(a)(1) of the Exchange Act and Rule 10b-5 thereunder, and MSRB Rule G-17.

B. Respondent Morris be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
>
> barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by Respondent Morris will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Morris shall, within 10 days of the entry of this Order, pay disgorgement of $156,347.48 and prejudgment interest of $22,661.82 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). Respondent Morris shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $75,000 to the Securities and Exchange Commission, of which $3,125 shall be transferred to the Municipal Securities Rulemaking Board in accordance with Section 15B(c)(9)(A) of the Exchange Act, and of which the remaining $71,875 shall be transferred to the general fund of the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600; if timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

E. 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 separately identifying Morris 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 Ivonia K. Slade, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, Respondent shall not argue that he is entitled to, nor shall Respondent benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor

Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary