

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86395 / July 16, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19254

In the Matter of

G. Wayne Oetken

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 G. Wayne Oetken (“Oetken” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting 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 finds¹ 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 a failure to register as a solicitor municipal advisor by G. Wayne Oetken. In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act which amended the Exchange Act to establish a federal regulatory regime applicable to municipal advisors. The Exchange Act and SEC rules and regulations thereunder identify two broad categories of municipal advisors: (1) those that provide certain advice to or on behalf of a municipal entity or obligated person; and (2) those that undertake certain solicitations of a municipal entity or obligated person on behalf of an unaffiliated third party, typically a financial professional such as a broker-dealer, municipal advisor or investment adviser. The latter category of municipal advisors are known as “solicitor municipal advisors.” Section 15B(a)(1)(B) requires all municipal advisors to register with the Commission. The registration requirement for solicitor municipal advisors is intended to provide protection and transparency to municipal entities and obligated persons as they make decisions on the hiring of financial professionals, including the hiring of municipal advisors.

2. Between October 2011 and March 2016, Oetken solicited municipal advisory business on behalf of Dale Scott & Company, Inc. (“DSC”), a registered municipal advisor. By soliciting municipal advisory business without properly registering with the Commission, Oetken violated the registration requirements of Section 15B(a)(1)(B) of the Exchange Act.

Respondent

3. G. Wayne Oetken, age 73, is a resident of El Cajon, California. Oetken was the Assistant Superintendent of Business Services at a school district in California from 1972 until his retirement in 2011. In 2011 Oetken began working as a consultant to school district business offices in California. Oetken has never registered with the Commission in any capacity.

Other Relevant Entity

4. Dale Scott & Co., Inc. (“DSC”) is a seven employee municipal advisory firm located in San Francisco, California, that provides advisory services to school districts and community college districts in California. DSC is registered as a municipal advisor with both the Commission and the Municipal Securities Rulemaking Board.

Facts

5. In October 2011, Oetken and DSC entered into the first of a series of contracts pursuant to which Oetken would, among other things, solicit new municipal advisory clients on behalf of DSC. Oetken’s long tenure working at a school district and the consulting work he did after retiring provided him with the name recognition and contacts that would be valuable in soliciting new school district clients for DSC.

6. Oetken communicated with school district business officials via email or telephone to solicit them to hire DSC to provide services for the potential sale of municipal bonds and attempt to secure a meeting between the school districts and DSC. In some cases

DSC provided Oetken with analysis about a school district's existing debt or financial condition to assist Oetken in soliciting the districts to hire DSC.

7. DSC paid Oetken a monthly retainer to perform the services under the contracts, including soliciting new clients. The contract was terminated in March 2016.

Violation

8. Section 15B(a)(1)(B) of the Exchange Act makes it unlawful to “undertake a solicitation of a municipal entity or obligated person” without being registered with the Commission. “Solicitation” of a municipal entity is defined as a “direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a . . . municipal advisor . . . that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity . . . of a municipal advisor for or in connection with municipal financial products, [or] . . . the issuance of municipal securities.” Exchange Act, Section 15B(e)(9).

9. Oetken undertook the solicitation of municipal entities without being registered with the Commission. Oetken's emails and phone calls to school districts were “communications” within the definition of solicitation in Section 15B(e)(9). As set forth above, Oetken contacted school districts regarding DSC's services in an effort to set up meetings to discuss the possibility of the school districts hiring DSC. Because these communications were made for the purpose of the school districts hiring DSC as a municipal advisor, they fall within the definition of solicitation. The payments made by DSC to Oetken meet the “compensation” element of the definition of solicitation in Section 15B(e)(9).

10. As a result of the conduct described above, Oetken violated Section 15B (a)(1)(B) of the Exchange Act for failing to register with the Commission.

IV.

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

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

A. Respondent Oetken cease and desist from committing or causing any violations and any future violations of Section 15B(a)(1)(B) of the Exchange Act.

B. Respondent shall pay a civil penalty of \$10,000, to the Securities and Exchange Commission. Payment shall be due twelve (12) months from the date of the Order. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) 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 Oetken as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to LeeAnn Ghazil Gaunt, Chief, Public Finance Abuse Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

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

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.

Vanessa A. Countryman
Secretary