

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92768 / August 26, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20480

In the Matter of

**CREWS & ASSOCIATES,
INC.**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
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 Sections 15(b), 15B(c) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Crews & Associates, Inc. (“Crews” 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to 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 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 unfair dealing by Crews, a regional broker-dealer headquartered in Little Rock, Arkansas. Crews works with local municipalities, across multiple states, that issue municipal securities, and often serves as underwriter on new issue municipal securities. Crews also trades municipal securities in the secondary market on behalf of itself and its customers.

2. In October 2015, Crews, at the direction of its then-CEO, recommended to The County Commission of Ohio County, West Virginia (the “County”) that the County attempt to reduce the amount of its outstanding debt service expense through a tender offer for bonds issued in 2006. The County had previously retained Crews in 2012 and 2014 to complete tender offers for the same series of bonds. Crews and its then-CEO recommended that the County offer to pay bondholders a price higher than the current market price of its outstanding bonds, and sufficiently high to incentivize bondholders to tender their bonds. Crews also recommended that the County fund its purchase of those previously issued bonds through the sale of new, lower interest rate bonds, which Crews would underwrite. When Crews made these recommendations, Crews and its then-CEO did not disclose to the County that Crews had recently acquired more than \$1 million principal amount of the County’s outstanding bonds at market prices and then sold them to two customers.

3. In the months following Crews’ and the County’s initial discussions of the tender offer, as Crews and the County finalized the terms of the proposed transaction, Crews purchased approximately \$4.8 million more of the County’s outstanding bonds at market prices and sold them to an affiliated entity (the “Affiliate”) and to Crews’ customers. Almost all of the bonds Crews acquired (including those originally sold to customers) were eventually sold to the Affiliate and tendered back to the County by the Affiliate at a price that Crews had recommended to the County. In recommending the purchase price, Crews did not disclose to the County that the Affiliate had acquired bonds to be tendered, or the resulting conflict of interest created by the Affiliate's financial interest in the tender offer.

4. As a result of the conduct described herein, Crews willfully² violated Municipal Securities Rulemaking Board (“MSRB”) Rules G-17 and G-27, and by reason of those violations, Section 15B(c)(1) of the Exchange Act.

Respondent

5. **Crews & Associates, Inc.** (“Crews” or “Respondent”) is a registered broker-dealer and municipal advisor headquartered in Little Rock, Arkansas. Crews is a wholly-owned subsidiary

²“Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act, “means no more than 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.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

of a privately-held bank holding company. On September 30, 2015, the Commission instituted settled administrative and cease-and-desist proceedings against Crews captioned In the Matter of Crews & Associates, Inc., Admin Proc. File No. 3-16865, as part of the Commission's Municipalities Continuing Disclosure Cooperation Initiative.

Other Relevant Entity

6. **The County Commission of Ohio County, West Virginia** (the "County") is a public corporation and is the governing authority for Ohio County, West Virginia. The County Commission's offices are located in Wheeling, West Virginia.

Background

7. In 2006, the County issued \$81 million principal amount of taxable economic redevelopment bonds maturing in 2035 and bearing interest at 8.25% (the "2006A Bonds"). The bonds contained a make-whole call provision that rendered calling them cost-prohibitive. As interest rates declined in subsequent years, servicing the debt on the 2006A Bonds at that relatively high interest rate became an increasing burden on the County, and the make-whole call provision made an ordinary refunding or advance refunding impractical.

8. In 2007, Crews began a business relationship with the County. By late 2015, Crews had underwritten nine bond offerings for the County, including special district excise tax revenue bonds, tax increment financing bonds, and two tender offers in 2012 and 2014 to refinance portions of the 2006A Bonds. In the context of municipal bonds, a tender offer may be used by an issuer as part of a plan to restructure the issuer's outstanding debt. The issuer offers to purchase all or a portion of the outstanding bonds of an issue at a specified price not greater than a maximum acceptable premium price (the "Maximum Acceptable Price"). The Maximum Acceptable Price is generally a function of two variables: (1) the premium over the market price necessary to attract tender offers from bondholders; and (2) the cost to the issuer of the funds used to purchase the tendered bonds. These two variables must be considered in tandem to ensure the tender is sufficiently attractive to bondholders and still economically advantageous to the issuer. Bondholders wishing to participate in the tender offer "tender" their bonds to the issuer, on or before the specified tender date, at the price at which they are willing to sell the bonds (which can be no greater than the Maximum Acceptable Price). If a sufficient amount of bonds are tendered to make the restructuring practicable, the issuer purchases the tendered bonds from the bondholders in order of price, from the lowest to the highest. The issuer funds the purchases with the proceeds of the sale of new, lower interest rate bonds. If those proceeds are sufficient to cover the cost of purchasing the tendered bonds and the costs of issuance for the new bonds, and the interest rate of the new bonds is low enough to generate overall debt service savings, then all tendered bonds are purchased.

9. In similar 2012 and 2014 tender offers, the County bought back some of the higher interest rate 2006A Bonds at a range of premiums up to the Maximum Acceptable Price and funded the buyback with proceeds from the issuance of new, lower interest rate municipal bonds, underwritten by Crews. The County did not retain a municipal advisor to represent its interests in these offerings, relying instead on its relationship with, and the expertise of, Crews. The tenders in

2012 and 2014 resulted in substantial savings for the County on its debt service costs, incorporated a more favorable call option on the new bonds, and lowered the amount of the County's letter of credit with a bank.

The 2016 Tender Offer

10. On August 10, 2015, a Crews investment banker emailed the County administrator, proposing that the County consider an advanced refunding of the County's Series 2006B tax-exempt bonds (which had been issued at the same time in 2006 as the 2006A Bonds).

11. On October 7 and 8, 2015, Crews purchased approximately \$1 million principal amount of the County's outstanding 2006A Bonds from a broker-dealer in response to a request for a bid. Crews purchased the bonds at a price of 106.69% of par, took them into inventory, and then sold the bonds to two Crews customers.

Crews Recommended the County Conduct a Tender Offer for the 2006A Bonds While Making Undisclosed Purchases of the 2006A Bonds for its Affiliate

12. On October 9, 2015, Crews' then-CEO directed a Crews investment banker to "run some numbers" on the economic feasibility of the County doing another tender offer for the 2006A Bonds. Later that same day, a Crews investment banker emailed the County to propose that the County may be in a position to accomplish a third tender offer on the 2006A Bonds to further reduce the amount of its outstanding debt service and possibly combine the tender offer with the previously-proposed advanced refunding.

13. On December 2, 2015, the County administrator responded to the October 9, 2015 proposal by emailing the Crews investment banker, stating that he had reviewed Crews' proposal and indicating that the County wanted to schedule a conference call "to review the financing options that we have now reviewed." That conference call was held on December 9, 2015.

14. On December 4, 2015, in response to a customer's request for bids, Crews bid on, and ultimately purchased, \$3.12 million of the County's 2006A Bonds from a Crews customer at a price of 107.20% of par. Crews then sold \$2.5 million of those bonds to the Affiliate. Crews' then-CEO was also then the CEO of the Affiliate, and Crews and the Affiliate were both wholly-owned subsidiaries of the same company. Crews' then-CEO controlled the Affiliate's account at Crews. Crews also sold \$620,000 of the bonds to another Crews customer.

15. On December 14, 2015, pursuant to MSRB Rule G-17, Crews sent the County a letter which documented the relationship between Crews and the County in connection with the proposed tender offer. In the letter, Crews acknowledged its obligation as a broker-dealer under MSRB Rule G-17 to deal fairly at all times with the County. The letter stated, among other things, that Crews or its respective affiliates may at any time hold long or short positions in the 2006A Bonds and, through employees who do not have access to non-public information relating to the 2006A Bonds, may trade or otherwise effect transactions in the 2006A Bonds. The letter also stated that Crews was "acting for its own interests" and had "financial and other interests that differ[ed] from those of [the County]." Crews represented that it had "not identified any additional

potential or actual material conflicts that require[d] disclosure,” and that it would notify the County “if additional potential or actual material conflicts are identified” in the future. Crews did not disclose, in the letter or elsewhere, that it had, in fact, already acquired \$2.5 million of the 2006A Bonds for its Affiliate, or that its Affiliate had a financial interest in the tender offer. Moreover, Crews did not disclose that those transactions were effected by Crews’ then-CEO, who had earlier initiated discussions with a Crews investment banker regarding the possible financial benefits of a tender by the County.

16. In the following weeks, before the tender offer was publicly announced, Crews continued to purchase 2006A Bonds and to sell them to the Affiliate. Crews bought 2006A Bonds from third parties and from Crews’ customers at market prices, marked them up (in most cases), and sold them to the Affiliate. Every Crews purchase and sale of the 2006A Bonds was approved by its then-CEO. All of the bonds purchased first went into trading accounts controlled by Crews’ then-CEO. Crews’ then-CEO then sold the bonds from those accounts into the Affiliate’s account at Crews – which the then-CEO also controlled.

Crews Recommended a Maximum Acceptable Price That Would Result in Savings for the County and Profit for the Affiliate If the Tender Was Completed

17. At the end of December 2015, the County’s bond counsel began circulating drafts of the offering documents for the tender offer and the advanced refunding.

18. After consulting with Crews’ then-CEO on current market conditions and calculating the possible savings from a tender using several possible Maximum Acceptable Prices, including 110%, 111%, and 112% of par, a Crews investment banker proposed a Maximum Acceptable Price of 110% of par.

19. When recommending the Maximum Acceptable Price be set at 110% of par, Crews did not disclose to the County that, since October 7, 2015, it had purchased \$4.64 million in principal value of the 2006A Bonds at market prices, which were then lower than 110% of par, and sold them to its customers and its Affiliate. Further, Crews did not disclose that its Affiliate had a financial interest in the tender offer because it held nearly \$3 million of the 2006A Bonds, and that Crews therefore had a conflict of interest in recommending the Maximum Acceptable Price that the County would pay. Finally, Crews did not disclose that: (a) because its customers held 2006A Bonds in their Crews accounts, those bonds were available to be tendered by Crews customers in the tender offer; and (b) the Affiliate and Crews’ customers held nearly enough 2006A Bonds that, if they tendered all of the bonds they owned, the tender would likely meet the minimum number of bonds required by the County for the tender to be successful.

20. As it had done with the 2012 and 2014 tender offers, the County accepted Crews’ recommendation for the Maximum Acceptable Price. On January 12, 2016, the County board formally retained Crews to underwrite the new bond issuance that would fund the tender offer of the 2006A Bonds. The County also authorized the issuance of \$10 million of new municipal bonds to fund its purchase of the 2006A bonds. On January 13, 2016, the notice of tender was publicly posted, with the Maximum Acceptable Price set at 110% of par. The tender date was scheduled for February 16, 2016.

**Crews Continued to Make Purchases of the 2006A Bonds
and Its Affiliate Profited After the Close of the Tender Period**

21. After the notice of tender became public, Crews continued to buy 2006A Bonds in the open market from third parties and from Crews customers at market prices, in some cases mark them up, and sell them to the Affiliate. By the time of the tender date, Crews had purchased \$5.865 million in principal value of the 2006A Bonds on behalf of its Affiliate, more than enough to effectuate the tender offer if the County accepted the Affiliate's offer to tender.

22. On the tender date of February 16, 2016, the Affiliate offered to tender all of these bonds to the County's tender agent at the Maximum Acceptable Price. Since the County did not receive a sufficient number of tender offers at prices lower than the Maximum Acceptable Price, the County accepted the offer of the Affiliate. In all, the Affiliate tendered 71% of all 2006A Bonds that were tendered to the County in connection with the tender offer. The tender resulted in significant savings for the County.

23. As a result of the markups it charged on its transactions in the 2006A Bonds with its customers and the Affiliate, Crews made a net profit of \$34,631. The Affiliate made a net profit of \$27,153 as a result of its purchases of 2006A Bonds from Crews and its tender of those same bonds to the County.

24. Although its G-17 letter stated Crews and its affiliates "may" trade in and be long the 2006A bonds, Crews did not disclose to the County that it and its Affiliate had, in fact, acquired the 2006A Bonds. The County was unaware that Crews was purchasing 2006A Bonds from third parties and from Crews customers in the open market and at market prices and then selling them to the Affiliate. The County did not know that Crews and the Affiliate profited from these transactions.

Crews' Supervisory Procedures

25. Crews did not maintain a system to supervise the municipal securities activities of its associated persons that was reasonably designed to achieve compliance with applicable securities laws, regulations, and MSRB rules. During the relevant period, Crews' written supervisory procedures ("WSPs") required trades to be reviewed by compliance staff, created obligations for employees who came into possession of information through Crews' investment banking activities, and required disclosures of material information when making recommendations to customers. However, Crews did not implement a system of accountability or controls for following the WSPs.

26. As a result, no Crews compliance employee reviewed Crews' purchases of the 2006A bonds for Crews' accounts. Crews also did not disclose information to the County about the conflict created by Crews' trading of and the Affiliate's purchases of 2006A Bonds in advance of the tender, despite the disclosure requirements of Crews' WSPs. Under these circumstances, Crews failed to maintain a system to supervise the municipal securities activities of each associated

person that is reasonably designed to achieve compliance with applicable securities laws, regulations and MSRB rules.

Violations

Crews Violated MSRB Rule G-17

27. 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. Negligence is sufficient to establish a violation of MSRB Rule G-17. See Wheat, First Securities, Inc., Exch. Act Rel. No. 48378, 2003 WL 21990950, at *10 (Aug. 20, 2003). The MSRB has interpreted an underwriter's Rule G-17 duty to require the underwriter to "make certain disclosures to the issuer to clarify its role in an issuance of municipal securities and its actual or potential material conflicts of interest with respect to such issuance." Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities, MSRB (August 2, 2012).

28. During the relevant time period, as discussed above, Crews did not disclose its conflicts of interest to the County.

29. Through the conduct described above, Crews willfully violated MSRB Rule G-17.

Crews Violated MSRB Rule G-27

30. MSRB Rule G-27(a) obligates brokers, dealers, and municipal securities dealers to "supervise the conduct of the municipal securities activities of the firm and its associated persons to ensure compliance with [MSRB] rules and the applicable provisions of the [Exchange] Act and rules thereunder." MSRB Rule G-27(b) obligates brokers, dealers, and municipal securities dealers to establish and maintain a system to supervise the municipal securities activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations and MSRB rules.

31. As described above, Crews did not maintain a system to supervise the municipal securities activities of its associated persons that was reasonably designed to achieve compliance with applicable securities laws, regulations, and MSRB rules. Crews did not implement a system of accountability or controls for following the WSPs. Therefore, Crews failed to maintain a system to supervise the municipal securities activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations, and MSRB rules.

32. Through the conduct described above, Crews willfully violated MSRB Rule G-27.

Crews Violated Section 15B(c)(1) of the Exchange Act

33. 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 and sale of, any municipal security in contravention of any MSRB Rule.

34. As a result of the willful violations of MSRB Rules G-17 and G-27, Crews willfully violated Section 15B(c)(1) of the Exchange Act.

Disgorgement

35. The disgorgement and prejudgment interest ordered in paragraph IV.C. is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to paragraph IV.C. in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Crews' Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Crews, including the following:

- Retention of an independent consultant: Crews retained an independent consultant to conduct a review of Crews' written supervisory procedures and supervisory structure, with particular attention to procedures related to Crews' municipal securities business including: information barriers between capital markets/public finance and trading and sales; restricted trading; municipal advisory activity separation from underwriting; and supervision, supervisory processes, and training of supervisors.
- Improvements to written supervisory procedures: Based on the recommendations of the independent consultant, Crews implemented measures intended to improve its written supervisory procedures as well as its compliance and supervisory processes.
- Changes to supervisory structure: Crews made changes to its senior management and supervisory personnel and structure, including the appointment of a new chief executive officer and chief compliance officer in order to improve, among other things, its supervisory oversight and accountability.

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 Sections 15(b), 15B(c) and 21C of the Exchange Act, it is hereby ORDERED that:

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

B. Respondent Crews is censured.

C. Respondent Crews shall, within 10 days of the entry of this Order, pay disgorgement of \$34,631 and prejudgment interest of \$9,441 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

D. Respondent Crews shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$200,000 to the Securities and Exchange Commission, of which \$66,667 shall be transferred to the Municipal Securities Rulemaking Board in accordance with Section 15B(c)(9)(A) of the Exchange Act. 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 Crews 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 Brian D. Fagel, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest and civil money penalty referenced in paragraphs C. and D. above. This Fair Fund will receive funds from the Fair Fund created in the Commission's related proceeding, *In the Matter of Rush F. Harding III*, simultaneously instituted with this matter, for distribution in accordance with further Commission Order. 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.

Vanessa A. Countryman
Secretary