SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RMR ASSET MANAGEMENT COMPANY, BRUCE A. BROEKHUIZEN, DOUGLAS J. DERRYBERRY, DAVID R. FROST, RICHARD C. GOUNAUD, NEIL P. KELLY, JOHN M. KIRSCHENBAUM, DAVID S. LUTTBEG, TIMOTHY J. MCALOON, JOCELYN M. MURPHY, MICHAEL S. MURPHY, RALPH M. RICCARDI, DEWEY T. TRAN, and PHILIP A. WEINER,

Defendants.
Plaintiff Securities and Exchange Commission (the “Commission”) alleges as follows:

**INTRODUCTION**

1. This matter involves a long-running fraudulent scheme operated by Defendant Ralph M. Riccardi (“Riccardi”) and his firm, Defendant RMR Asset Management Company (“RMR”), to purchase new issue municipal bonds (“new issue bonds”) and quickly re-sell or “flip” those bonds to broker-dealer customers. Riccardi hired the other individual Defendants, Bruce A. Broekhuizen (“Broekhuizen”), Douglas J. Derryberry (“Derryberry”), David R. Frost (“Frost”), Richard C. Gounaud (“Gounaud”), Neil P. Kelly (“Kelly”), John M. Kirschenbaum (“Kirschenbaum”), David S. Luttbeg (“Luttbeg”), Timothy J. McAloon (“McAloon”), Jocelyn M. Murphy (“J. Murphy”), Michael Sean Murphy (“M. Murphy”), Dewey T. Tran (“Tran”), and Philip A. Weiner (“Weiner”) (these twelve individuals are referred to collectively as the “Participants”), to flip new issue bonds and other securities on behalf of RMR.

2. From at least 2009 to 2017, Defendants purchased new issue bonds in primary offerings from underwriters and then quickly sold or flipped those bonds to their own broker-dealer customers for a commission, usually within the same day. Between 2012 and 2016, Defendants executed over 50,000 trades, generating millions of dollars in profits for RMR.

3. RMR’s fraudulent flipping business model exploited a unique feature of municipal underwriting – a set of issuer-approved rules known as the “priority of orders.” The priority of orders dictates the priority that underwriters assign to orders submitted by various classes of investors. Typically, municipal issuers require underwriters to give the highest priority to retail investor orders when allocating new issue bonds while broker-dealers frequently receive the lowest priority. Because retail orders take priority and because municipal bond offerings are often oversubscribed (i.e., orders for the bonds exceed the amount of bonds available for purchase), broker-dealers who want to purchase new issue bonds for their own inventory are often unable to obtain them. To circumvent
the priority of orders, Defendants, operating as unregistered brokers, solicited orders for new issue bonds from broker-dealers who were typically unable to purchase those bonds directly from underwriters and filled those orders with bonds the Defendants obtained from underwriters in new offerings. In exchange for this service, Defendants charged their broker-dealer customers a fixed, pre-arranged commission, usually one dollar per bond.

4. At all relevant times, RMR was controlled by and acted through Riccardi.

5. Many Defendants, including RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner, obtained new issue bonds by misrepresenting themselves as retail investors or asset managers for retail investors when, in fact, they operated predominantly as flippers, placing orders on behalf of other broker-dealers. Because issuers generally prioritize retail investors (or their representatives), this deception allowed these Defendants to purchase a significantly higher volume of new issue bonds than they would have obtained but for the deceptive conduct.

6. During the relevant time period, RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner engaged in various types of fraudulent conduct to create the false appearance that they were, or managed money on behalf of, retail investors and therefore their orders qualified for higher priority, including:

   a. **Use of fraudulent zip codes:** When placing orders for new issue bonds, these Defendants provided fraudulent zip codes to indicate that the orders were for a resident of the jurisdiction issuing the debt. Providing a zip code from within the issuing jurisdiction was often necessary to qualify as top priority “retail.”

   b. **Use of Multiple Entities and DBA names:** Instead of placing orders under RMR’s or Riccardi’s name, Defendants held accounts and placed orders under dozens of different doing-business-as (“DBA”) names. Even within a single
brokerage firm, Defendants often maintained multiple customer accounts under different DBA names to gain access to multiple salespeople at the firm, and thereby maximize the number of orders they could place and allotments they could receive of new issue bonds. RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner created and used these DBAs to conceal from underwriters and/or issuers that any bonds allocated to their DBAs would go to RMR.

c. **Deceptive means to conceal flipping:** Defendants knew that underwriters and issuers commonly monitor early trading to look for signs of flipping. In an effort to avoid detection of their flipping, which could lead underwriters to reject their future retail orders, RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner would adjust prices, quantities, and times on their sales tickets to their purchasing broker-dealer customers to disguise their subsequent sale or flip of the bonds to those customers.

7. In addition, some Defendants, including RMR, Frost, Kirschenbaum, and Riccardi, conspired with a registered representative (“Representative”) at an underwriting firm (“Firm A”) in a scheme to obtain new issue bonds through fraudulent retail orders. Representative was the salesperson for multiple accounts held at Firm A by Riccardi, Frost, and Kirschenbaum, in the name of RMR and various other DBA names. Representative caused Firm A to submit retail orders on behalf of these Defendants to senior managers and/or issuers even though Representative knew that the orders included fraudulent zip codes to obtain the highest priority. RMR, Frost, Kirschenbaum, and Riccardi aided and abetted Representative’s materially misleading misrepresentations by:

1. providing Representative with fraudulent zip codes to submit with their orders; and/or
2. complying with Representative’s requests to disguise their subsequent flip of new issue bonds Representative obtained for them through fraudulent retail orders.

8. By engaging in the conduct alleged in this Complaint:
a. RMR, Broekhuizen, Derrybery, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner violated the antifraud provisions of Section 10(b) of the Securities and Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;

b. RMR, Frost, Kirschenbaum, and Riccardi aided and abetted Representative’s violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R. § 240.10b-5(b);

c. RMR, Broekhuizen, Derrybery, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner violated Municipal Securities Rulemaking Board ("MSRB") Rule G-17; and


9. Based on the aforementioned violations, the Commission brings this action to request that the Court enter a final judgment that, inter alia: enjoins Defendants from future violations of the relevant provisions of the Exchange Act and MSRB Rule G-17; enjoins Defendants from opening or maintaining any brokerage account without providing the brokerage firm a copy of this Complaint and a copy of any final judgment entered against them in this action; and orders Defendants to disgorge ill-gotten gains from their illegal conduct, together with prejudgment interest thereon, as well as pay civil penalties based on their violations of the Exchange Act and MSRB Rule G-17.

JURISDICTION AND VENUE

10. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1), and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1), 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27(a) of the Exchange Act, 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e), and 78aa(a).

11. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce or of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.
12. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a), because certain of the transactions, acts, practices, and courses of conduct constituting violations of the federal securities laws occurred within this district. For example, between at least 2012 and 2016, Riccardi operated RMR, which contracted with the Participants, out of his home, which is located within this district. In addition, between at least 2012 and 2016, Gounaud, J. Murphy, and M. Murphy regularly transacted with and conducted securities trades on behalf of, and collectively received hundreds of thousands of dollars in transaction-based compensation from, RMR, which conduct constituted violations of the federal securities laws occurring within this district.

THE DEFENDANTS

13. RMR is a California corporation with its principal place of business in Chula Vista, California. RMR’s primary activity is to buy and quickly re-sell or flip new issue bonds and other securities. RMR is owned by Riccardi and his wife. RMR has never been registered with the Commission as a broker-dealer.

14. Riccardi resides in Chula Vista, California. Riccardi is RMR’s president and directs RMR’s operations. In addition, Riccardi traded new issue bonds under the entity name of RMR. Before forming RMR in 1995, Riccardi held Series 3 and 7 securities licenses and had at least a decade of municipal industry experience.

15. Broekhuizen resides in Brockport, New York. Broekhuizen previously held Series 7, 52, and 63 securities licenses and had approximately 18 years of industry experience before he began flipping bonds for RMR. Broekhuizen worked for RMR from at least 2008 to 2017.

16. Derryberry resides in McKinney, Texas. Derryberry previously held a Series 7 securities license and had approximately 4 years of industry experience before he began flipping bonds for RMR. Derryberry worked for RMR from at least 2011 to 2017.
17. **Frost** resides in Spring Lake, New Jersey. Frost has never been registered with the Commission as a broker-dealer or as an associated person of a registered broker-dealer. Frost worked for RMR from at least 2007 to 2017.

18. **Gounaud** resides in Chester, New Jersey. Gounaud previously held Series 7, 24, and 63 securities licenses and had approximately 19 years of industry experience before he began flipping bonds for RMR. Gounaud worked for RMR from at least 2009 to 2017.

19. **Kelly** resides in Plandome, New York. Kelly previously held Series 3, 7, 8, 63, and 65 securities licenses and had approximately 15 years of industry experience before he began flipping bonds for RMR. Kelly worked for RMR from at least 2010 to 2017.

20. **Kirschenbaum** resides in Seattle, Washington. Kirschenbaum previously held Series 3, 7, and 63 securities licenses and had approximately 12 years of industry experience before he began flipping bonds for RMR. Kirschenbaum worked for RMR from 2010 to 2017.

21. **Luttbeg** resides in San Diego, California. Luttbeg previously held a Series 6 license and had approximately 2 years of industry experience before he began flipping bonds for RMR. Luttbeg worked for RMR from 2011 to 2014.

22. **McAloon** resides in Chatham, New Jersey. McAloon previously held Series 3, 7, 63, and 66 securities licenses and had approximately 20 years of industry experience before he began flipping bonds for RMR. McAloon worked for RMR from at least 2011 to 2017.

23. **J. Murphy** resides in Denver, Colorado. J. Murphy previously held Series 7 and 63 securities licenses and had approximately 8 years of industry experience before she began flipping bonds for RMR. J. Murphy worked for RMR from at least 2010 to 2017.

24. **M. Murphy** resides in Denver, Colorado. M. Murphy previously held Series 7 and 63 securities licenses and had approximately 6 years of industry experience
before he began flipping bonds for RMR. M. Murphy worked for RMR from at least 2008 to 2017.

25. Tran resides in Land O’ Lakes, Florida. Tran previously held Series 7, 53, and 63 securities licenses and had approximately 16 years of industry experience before he began flipping bonds for RMR. Tran worked for RMR from at least 2008 to 2017.

26. Weiner resides in Conifer, Colorado. Weiner has never been registered with the Commission as a broker-dealer or as an associated person of a registered broker-dealer. Weiner worked for RMR from 2001 to 2016.

**BACKGROUND ON NEGOTIATED OFFERINGS OF MUNICIPAL BONDS**

27. Municipalities often raise money by issuing bonds that are sold to the public through an underwriting process. As part of this process, one broker-dealer or a syndicate of broker-dealers – also known as underwriters – purchase new bonds from the issuer and sell the securities to investors.

28. New issue bonds in negotiated offerings are made available to the public during designated “order periods,” which are windows of time during which the underwriters solicit orders from their customers. Underwriters announce and market offerings by widely distributing electronic pricing wires to broker-dealers, who may be interested in purchasing bonds for their inventory and/or marketing the bonds to their customers. The pricing wires detail the bonds that will be offered for sale as well as rules and restrictions that apply to the offering.

29. An issuer may specify separate order periods for different categories of customers. Often, there is an initial order period reserved exclusively for retail customers, known as a “retail order period.” The pricing wires distributed by the underwriters to other broker-dealers frequently announce retail order periods and may also contain definitions, which the issuer has either written or agreed to, to establish who is and is not eligible to participate in a retail order period. For example, in some cases “retail” orders can only be placed by residents of the issuer’s jurisdiction. Asset managers transacting on behalf of individual clients generally meet the definition of
“retail.” In addition, issuers often require submission of zip codes with retail orders as a way to verify that the customer is a resident of the issuer’s jurisdiction. Such a requirement would be stated on the pricing wire.

30. Orders for bonds in a primary offering often exceed the amount of bonds available. The senior manager and issuer decide which orders will be filled. Priority provisions, which are usually set by issuers, are specified on the pricing wire and establish the sequence in which bonds will be allocated to specific order types. Where the issuer includes a retail order period, retail orders are generally afforded the highest priority. The priority afforded to retail customers means that, where an offering is oversubscribed, retail customers have the best chance of getting their orders filled.

FACTUAL ALLEGATIONS

31. Riccardi formed RMR in 1995. Between 2001 and 2010, Riccardi hired the Participants to increase the number of orders that could be placed on behalf of RMR and, consequently, the volume of new issue bonds RMR could purchase and flip to broker-dealer customers. Riccardi and the Participants opened and maintained numerous accounts at underwriting firms so that they could place orders for new issue bonds underwritten by different broker-dealers.

32. To disguise that all of the Participants’ accounts were connected to RMR, Riccardi directed the Participants to open brokerage accounts under DBA names. Riccardi knew that the Participants would be allocated more new issue bonds if they were perceived to be independent entities rather than flippers working on behalf of RMR.

33. Each Defendant operated under multiple DBA names, as shown in the chart below. Defendants commonly opened multiple accounts at the same firm under different DBA names, with each account assigned a different sales representative, to increase the pool of sales representatives to whom they could submit orders.

<table>
<thead>
<tr>
<th>Defendant</th>
<th>DBA Names Used</th>
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</thead>
<tbody>
<tr>
<td>Broekhuizen</td>
<td>BAB Holdings, DAR Management Group</td>
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<tr>
<td></td>
<td>Gate Hill Capital, Oak Hill Capital</td>
</tr>
<tr>
<td>Defendant</td>
<td>DBA Names Used</td>
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<tr>
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<tr>
<td>Derryberry</td>
<td>Jacob Capital Holdings</td>
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<tr>
<td>Frost</td>
<td>Eagle Capital Management</td>
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<td></td>
<td>Madison Associates</td>
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<tr>
<td>Gounaud</td>
<td>Chester Cliffwood Associates</td>
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<tr>
<td></td>
<td>Kingston Court Associates</td>
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<tr>
<td>Kelly</td>
<td>AME Capital</td>
</tr>
<tr>
<td>Kirschenbaum</td>
<td>Bess Investments</td>
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<td>Luttbeg</td>
<td>Barcelona Financial Management, LLC</td>
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<td></td>
<td>Madrid Financial Management</td>
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<tr>
<td>McAloon</td>
<td>Rose Hill Partners</td>
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<td></td>
<td>Titan-Lion Partners</td>
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<tr>
<td>J. Murphy</td>
<td>Humboldt Capital</td>
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<tr>
<td>S. Murphy</td>
<td>Atlas Capital Holdings</td>
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<td></td>
<td>Durant Limited</td>
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<td>Riccardi</td>
<td>Andalucia Financial Management</td>
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<td></td>
<td>Armor Asset Management</td>
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<td></td>
<td>Betancourt Capital Management</td>
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<td>Cayetano Capital Management</td>
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<td>Highlands Financial Management</td>
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<td>Innis Partners</td>
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<td>Granada Partners</td>
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<td>Tran</td>
<td>Jono Capital Management</td>
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<td></td>
<td>Midwest Bay Partners</td>
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<td>Weiner</td>
<td>Belgard Capital Management</td>
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<td></td>
<td>Braden Capital Management</td>
</tr>
</tbody>
</table>

34. Defendants also used delivery-versus-payment ("DVP") accounts rather than cash accounts. This furthered the scheme because a DVP account, unlike a traditional brokerage account, does not require the account to maintain cash sufficient to cover all securities purchased. Rather, Defendants could “match” trades between DVP accounts at the underwriter from whom they were purchasing the bonds and the customer firm to whom they were selling the bonds, so that they did not have to pay cash up front for the
securities they traded. The use of DVP accounts therefore increased the volume of new issue bonds Defendants could purchase.

A. Defendants were Unregistered Brokers.

35. All Participants traded new issue bonds on behalf of RMR using RMR’s capital, which was provided by Riccardi. The Participants placed orders for and purchased new issue bonds from underwriters at Riccardi’s direction and under his supervision. Defendants had notice of most major municipal offerings coming to market because they received electronic pricing wires from their account representatives at broker-dealer firms serving as underwriters for those offerings.

36. In addition to purchasing new issue bonds at Riccardi’s direction, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAlloon, J. Murphy, Tran, and Weiner, as well as Riccardi, solicited orders and traded these bonds with their own broker-dealer customers. Between 2012 and 2016, these Defendants regularly solicited orders by, among other means, forwarding thousands of electronic pricing wires for upcoming offerings to large distribution lists of municipal bond salespersons and traders at various broker-dealer firms (collectively, the “RMR Customers”). After receiving these pricing wires, RMR Customers frequently responded to these Defendants’ solicitations with an “indication of interest,” conveying a desire to purchase a specific quantity of a particular maturity and coupon of new issue bonds.

37. Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAlloon, J. Murphy, Riccardi, Tran, and Weiner understood that indications of interest they received from RMR Customers were commitments to purchase the bonds in the event that a Defendant obtained the bonds from the underwriting syndicate.

38. When Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAlloon, J. Murphy, Riccardi, Tran, and Weiner were allotted bonds against their orders, they created and sent electronic “tickets” to sell the bonds to the RMR Customers who indicated interest for such bonds. To generate these sale tickets, Defendants had to enter the CUSIP for the bonds being sold as well as other information such as the quantity, price,
and customer name. When Defendants sold bonds to RMR Customers, they generally did so at a price of one dollar above the initial offering price, without negotiation and irrespective of market value. In turn, the RMR Customers who purchased the bonds from Defendants took them into their inventory, and typically marked them up further before selling them on to customers or other broker-dealers.

39. RMR paid the Participants transaction-based compensation for each allotment of bonds that RMR was able to flip at a profit. Specifically, for each trade, RMR and the Participant who purchased the bonds on RMR’s behalf split the profits evenly.

40. Riccardi and the Participants executed numerous securities transactions on behalf of RMR. Collectively, between January 1, 2012 and December 31, 2016, Defendants executed approximately 47,000 trades of new issue bonds, with each Defendant executing approximately the following number of trades of new issue bonds over this time period:

   a. Broekhuizen: 2,027
   b. Derryberry: 2,831
   c. Frost: 8,172
   d. Gounaud: 422
   e. Kelly: 1,685
   f. Kirschenbaum: 7,867
   g. Luttbeg: 502
   h. McAloon: 8,208
   i. J. Murphy: 2,378
   j. M. Murphy: 355
   k. Riccardi: 10,006
   l. Tran: 1,736
   m. Weiner: 1,553
41. In addition to purchasing new issue bonds, Gounaud, J. Murphy, and M. Murphy purchased other securities on behalf of RMR using RMR’s capital. The additional securities Gounaud, J. Murphy, and M. Murphy purchased included stocks, municipal bonds trading in the secondary market, corporate bonds, and/or collateralized mortgage obligations (CMOs) (collectively, “Other Securities”). Gounaud, J. Murphy, and M. Murphy purchased Other Securities through brokerage accounts they opened under DBA names listed in the table shown in paragraph 33 above.

42. As with new issue bonds, Gounaud, J. Murphy, and M. Murphy purchased Other Securities on behalf of RMR in order to flip these securities to broker-dealers. On information and belief, Gounaud, J. Murphy, and M. Murphy received at least half of the profits RMR earned from these trades, and RMR retained the remainder of the profits.

43. Between August 1, 2013 and May 31, 2017, Gounaud executed approximately 2,297 trades of new issue bonds and Other Securities on behalf of RMR.

44. The securities purchased by Gounaud on behalf of RMR between August 1, 2013 and May 31, 2017 had an approximate total value of $78.6 million.

45. Between November 28, 2011 and June 29, 2017, J. Murphy executed approximately 6,407 trades of new issue bonds and Other Securities on behalf of RMR.

46. The securities purchased by J. Murphy on behalf of RMR between November 28, 2011 and June 29, 2017 had an approximate total value of $520.3 million.

47. Between November 28, 2011 and March 10, 2017, M. Murphy executed approximately 10,174 trades of new issue bonds and Other Securities on behalf of RMR.

48. The securities purchased by M. Murphy on behalf of RMR between November 28, 2011 and March 10, 2017 had an approximate total value of $508 million.

49. Although Defendants regularly participated in securities transactions at key points in the chain of distribution, effected securities transactions on behalf of others, received transaction-based compensation, and/or actively solicited investors to purchase securities, no Defendant, at any relevant time, was registered with the Commission as a broker-dealer or associated person of a registered broker-dealer.
B. Defendants Employed Fraudulent Means and Made Material Misrepresentations to Obtain New Issue Bonds.

50. Many Defendants, including RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner, engaged in fraudulent conduct to create the false appearance that they were, or managed money on behalf of, retail investors, and therefore, that their orders for new issue bonds qualified for retail priority treatment.

51. Riccardi trained and directed these Participants on ways to submit fraudulent retail orders for new issue bonds. These tactics included: (1) using fraudulent zip codes; (2) disguising the beneficial owner of the account by employing DBA names; and/or (3) concealing the re-sale or flip of new issue bonds to RMR Customers by manipulating the quantities, times, and prices of sales tickets.

i. Use of fraudulent zip codes

52. As discussed above, municipal issuers commonly require underwriters distributing new issue bonds to give the highest priority to orders from retail customers located within the issuer's jurisdiction. Such a requirement will be stated on the pricing wires underwriters distribute to other broker-dealers, along with any verification the issuer may require to be submitted with retail orders, such as a zip code. RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner received dozens of pricing wires each week from broker-dealers they had accounts with and were familiar with this zip code requirement for retail orders.

These Defendants understood that when an issuer required submission of a zip code with retail orders, they could increase their likelihood of receiving an allocation by providing a qualifying zip code within the issuer's specified jurisdiction to create the false appearance that they qualified for top-priority retail treatment. They, therefore, submitted fraudulent zip codes, i.e., zip codes in which they did not live or reside, along with their orders to increase the likelihood that they would be allotted bonds, which would result in more trades and more profits for these Defendants and RMR. For example, when these
Defendants wanted to purchase bonds offered by an issuer outside their home state, they often looked up zip codes for that state on various online zip code databases, such as www.uszipcodes.com. Riccardi also frequently sent other Defendants fraudulent zip codes to submit with their orders. These Defendants’ use of fraudulent zip codes in connection with the orders they placed for new issue bonds occurred between at least January 2012 and May 2016.

53. Based on their industry knowledge and experience, and their notice of the applicable definitions of “retail” from the pricing wires they received, RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner knew or were reckless in not knowing that the zip codes they provided were material to the allocation decisions of issuers and/or underwriters. In particular, RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner knew or were reckless in not knowing that when the issuer required submission of zip codes with retail orders, the issuer was relying on the zip code as a verification of the customer’s location to confirm that customer’s eligibility for retail priority.

ii. Use of multiple entities and DBA names

54. Between 2012 and 2016, Defendants opened accounts at underwriting firms and submitted orders for new issue bonds under multiple DBA names, which they changed regularly.

55. Riccardi and the Participants’ use of DBA names constituted deceptive conduct because it disguised that all of their orders, which appeared to be submitted on behalf of wealthy individual investors or different asset management firms, were in fact all submitted on behalf of one entity, RMR, which was engaged in flipping securities to broker-dealers and not managing assets on behalf of retail investors. In many cases, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Tran, and Weiner furthered this deception by failing to disclose Riccardi or RMR as a beneficial owner in their account opening applications. For example:
a. On or around January 26, 2010, Broekhuizen signed and submitted documentation to a broker-dealer to open a new brokerage account under the DBA name of Gate Hill Capital. Broekhuizen failed to identify RMR or Riccardi as a beneficial owner of the account or as a source of funds in the account, as the forms required.

b. On or around February 7, 2011, Derryberry signed and submitted documentation to a broker-dealer to open a new brokerage account under the DBA name of Joseph Capital Holdings. Derryberry falsely stated on these forms that he, the account holder, had $20 million in annual income and $20 million in liquid assets. Derryberry also did not disclose RMR or Riccardi as a beneficial owner of the account as the forms required.

c. On or around April 19, 2011, Frost submitted documentation to a broker-dealer to open a new brokerage account under the DBA name of Worthington Partners. Frost falsely stated on these forms that he, the account holder, had $500 million in annual income and $500 million in liquid assets. Frost also did not disclose RMR or Riccardi as a beneficial owner of the account as the forms required.

d. On or around November 14, 2011, Kelly signed and submitted documentation to a broker-dealer to open a new brokerage account under the DBA name of AME Capital. Kelly falsely stated on these forms that he, the account holder, had a net worth of $25 million. Kelly also failed to identify RMR or Riccardi as a beneficial owner of the account as the forms required.

e. On or around March 17, 2010, Kirschenbaum submitted documentation to a broker-dealer to open a new brokerage account under the DBA name of UJB Capital. Kirschenbaum falsely stated on these forms that he, the account holder, had $5 million in annual income and a net worth of $10 million. Kirschenbaum also did not disclose RMR or Riccardi as a beneficial owner of the account as the forms required.
f. On or around September 28, 2011, McAloon submitted documentation to a broker-dealer to open a new brokerage account under the DBA name of Rose Hill Partners LLC. McAloon did not disclose RMR or Riccardi as a beneficial owner of the account as the forms required.

g. On or around December 9, 2010, J. Murphy signed and submitted documentation to a broker-dealer to open a new brokerage account under the DBA name of Westwood Capital LLC. J. Murphy failed to identify RMR or Riccardi as a beneficial owner of the account.

h. On or around May 14, 2012, Weiner signed and submitted documentation to a broker-dealer to open a new brokerage account under the DBA name of Canyon Financial Management. Weiner failed to identify RMR or Riccardi as a beneficial owner of the account or as a source of funds in the account, as the forms required.

56. Riccardi’s and the Participants’ use of DBA names furthered their scheme in multiple ways. First, having numerous accounts open under various DBA names allowed Defendants to circumvent the order size limits typically applicable to retail orders. For example, a Defendant could submit duplicative retail orders at the maximum size limit using each of his or her DBA names, and thereby obtain many more bonds than would be permitted for a single retail customer order.

57. In addition, DBA names helped Defendants avoid being flagged by underwriters as flippers by allowing them to portray themselves as retail investors (or asset managers acting on behalf of retail investors). This benefited Defendants because, as Defendants knew, underwriters often avoid allocating bonds to flippers on a retail basis according to an issuer’s preferences. If an underwriter became aware that a Defendant was a flipper, it would be less likely to allocate bonds on a retail basis to that Defendant in the future, at least for deals in which the issuer had expressed a preference to avoid selling bonds to flippers. This is because issuers typically reserve the right to audit retail orders to verify that they represent legitimate retail buyers, and, if such an
order cannot be verified, to take action against the underwriter that submitted the unverified order, including exclusion from that issuer’s future underwriting syndicates.

iii. Steps to disguise flipping of new issue bonds

58. Defendants knew that underwriters and issuers often review early trading to look for flipping activity. Issuers, in particular, may attempt to identify flipping to determine compliance with their retail priority requirements. Because real retail investors are typically “buy and hold” investors, immediate trading in bonds allocated on a retail basis may suggest that the bonds were sold to a customer who does not meet the issuer’s definition of retail, and who has instead flipped the bonds to a pre-arranged buyer.

59. Underwriters and issuers may be able to detect flipping activity in several ways. One hallmark of flipping is if, shortly after trading begins, bonds trade at a price one dollar or fifty cents above the initial offering price, a typical flipper commission. Underwriters and issuers may also be able to identify flipping based on the quantity of bonds being traded. For example, if $315,000 of bonds (at par value) are allocated to a purportedly “retail” customer and that exact amount is not allocated to any other customer, a trade of $315,000 bonds immediately after trading begins may indicate the bonds had been sold to a flipper and not a retail customer.

60. To avoid detection of their flipping, RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner engaged in one or more of the following deceptive practices:

   a. altering the quantity or price of bonds they re-sold;
   b. intentionally delaying ticketing their re-sale transactions until there was an established pattern of trading, even though the RMR Customer had agreed to purchase the bonds hours or days earlier; and/or
   c. enlisting the RMR Customers to help disguise their flipping, especially where Defendants had obtained bonds on a retail priority basis. Defendants would do this by warning RMR Customers to “be careful” or
“disguise” their trading of the bonds, meaning the customers should break up quantities, adjust prices, or delay trading as described above.

61. These Defendants engaged in the above-described deceptive tactics to hide their flipping of new issue bonds because they knew that they were not qualified to obtain bonds on a retail priority basis, and if an underwriter discovered that they flipped bonds obtained on a retail priority basis, they would be less likely to get bonds from that underwriter in the future. Their deceptive tactics, which were carried out to enable these Defendants to continue flipping bonds and earning trading commissions, also defrauded issuers who had set rules for their offerings to prioritize sales of their bonds to retail investors.

iv. Additional examples of Defendants’ fraudulent conduct

a. Broekhuizen

62. Broekhuizen repeatedly misrepresented his zip code when placing orders for new issue bonds during retail order periods.

63. For example, on August 24, 2015, a Kentucky issuer held a retail order period for new issue bonds. The pricing wire defined retail orders as those “submitted by individuals … [or] by professional advisors/managers [ ] for individuals [or] for dedicated Kentucky specific co-mingled accounts and mutual funds.” The pricing wire further required submission of zip codes with all retail orders. During the retail order period, Broekhuizen placed an order specifying that it was “retail” even though he knew the bonds would be sold to a broker-dealer, and were not for an individual or a Kentucky co-mingled account or mutual fund. Moreover, to increase the likelihood that he would receive an allocation, Broekhuizen fraudulently provided two different Kentucky zip codes with his “retail” order even though Broekhuizen knew he did not live or reside in Kentucky.

64. In addition to placing retail orders using fraudulent zip codes, Broekhuizen took steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds, including by asking his customers to disguise their trading of the bonds
Broekhuizen obtained for them. For example, on February 28, 2013, Broekhuizen notified one of his customers that Broekhuizen had obtained 200,000 bonds for the customer, but that the customer needed to “disguise if possible” any re-sale of the bonds.

b. Derryberry

65. Derryberry repeatedly misrepresented his zip code when placing orders for new issue bonds during retail order periods.

66. For example, on March 24, 2012, Derryberry placed an order for bonds issued by a North Carolina medical center. The pricing wire for the offering specified that orders from North Carolina retail customers would receive the highest priority. To increase the likelihood that he would receive an allocation, Derryberry fraudulently provided a North Carolina zip code with his order even though he knew he did not live or reside in North Carolina.

67. In addition to placing retail orders using fraudulent zip codes, Derryberry took steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds, including by asking Riccardi to hide subsequent trades of bonds Derryberry purchased on behalf of RMR. For example, on July 26, 2013, Derryberry wrote to Riccardi that he had been allotted bonds but that Riccardi should “[h]ide them well,” as Derryberry was allotted the bonds on a retail priority basis. Similarly, on April 17, 2012, Derryberry wrote to Riccardi that he had been allotted bonds but that the underwriter had them “under the spotlight after the Oceanside flip,” and so “it would be best to move slow and hide the trades in a package if possible.”

c. Frost

68. Frost repeatedly misrepresented his zip code when placing orders for new issue bonds during retail order periods.

69. For example, on January 15, 2013, Frost placed an order for bonds offered by an Oregon issuer. The pricing wire for the offering specified that orders from Oregon retail customers would receive the highest priority. To increase the likelihood that he would receive an allocation, Frost fraudulently provided an Oregon state zip code with
his order even though he knew he did not live or reside in Oregon. On January 16, 2013, Frost received an allotment against his order.

70. In addition to placing retail orders using fraudulent zip codes, Frost took steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds, including by asking Riccardi to hide subsequent trades of bonds Frost purchased on behalf of RMR. For example, on February 18, 2016, Frost wrote to Riccardi that he had been allotted bonds on a retail basis “so please be careful.”

71. Frost also hid his flipping of new issue bonds by asking his customers to disguise their trading of bonds Frost obtained for them. For example, on September 10, 2015, Frost notified one of his customers that the customer would receive 365,000 bonds, but that the customer needed to “be careful” with the allotment, and the customer responded “don’t worry” because he would “mar[y]” the allotment from Frost with another allotment before re-trading the bonds.

d. Kelly

72. Kelly repeatedly misrepresented his zip code when placing orders for new issue bonds during retail order periods.

73. For example, on January 18, 2012, Kelly placed an order for bonds offered by a South Carolina issuer. The pricing wire for the offering specified that orders from South Carolina retail customers would receive the highest priority. To increase the likelihood that he would receive an allocation, Kelly fraudulently provided a South Carolina zip code with his order even though he knew it was not the zip code in which he lived or resided.

74. In addition to placing retail orders using fraudulent zip codes, Kelly took steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds, including by asking Riccardi to hide subsequent trades of bonds Kelly purchased on behalf of RMR. For example, on February 25, 2016, Kelly asked Riccardi to “combine” an allotment of new issue bonds Kelly received with another allotment Riccardi received of the same maturity before Riccardi flipped the bonds to an RMR customer.
e. Kirschenbaum

75. Kirschenbaum repeatedly misrepresented his zip code when placing orders for new issue bonds during retail order periods.

76. For example, on October 22, 2014, Kirschenbaum placed an order for bonds offered by a New Jersey issuer. The pricing wire for the offering specified that orders from New Jersey retail customers would receive the highest priority. To increase the likelihood that he would receive an allocation, Kirschenbaum fraudulently provided a New Jersey zip code with his order even though he knew he did not live or reside in New Jersey.

77. In addition to placing retail orders using fraudulent zip codes, Kirschenbaum took steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds, including by breaking up allotments he received from multiple broker-dealers before re-selling the bonds to an RMR Customer. For example, on January 22, 2014, Kirschenbaum agreed to “be careful” and split the allotments he was receiving before re-trading the bonds.

f. McAlloon

78. McAlloon repeatedly misrepresented his zip code when placing orders for new issue bonds during retail order periods.

79. For example, on June 5, 2013, McAlloon placed an order for bonds offered by a Connecticut issuer. The pricing wire for the offering specified that Connecticut retail orders, defined as “orders placed for the account of a Connecticut resident,” would receive the highest priority. To increase the likelihood that he would receive an allocation, McAlloon fraudulently provided a Connecticut state zip code with his order even though he knew he did not live or reside in Connecticut. On June 6, 2013, McAlloon received an allotment against his order.

80. In addition to placing retail orders using fraudulent zip codes, McAlloon took steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds, including by asking his customers to alter the price and timing of their purchases of the
bonds McAloon obtained for them. For example, on February 21, 2013, McAloon notified one of his customers that the customer would receive an allotment but that “we need to be careful” with ticketing the trades because the underwriter “will be looking for that up-$1 ticket.” McAloon asked that they wait to write the sales tickets until the next day and write them at a “weird” price to avoid detection by the underwriter.

g. J. Murphy

81. J. Murphy repeatedly misrepresented her zip code when placing orders for new issue bonds during retail order periods.

82. For example, on or about June 7, 2012, a Puerto Rico issuer held a retail order period for new issue bonds. The pricing wire stated that “orders [] for individuals, bank trusts and investment advisors” could be placed during the retail order period, and that the issuer’s intention was “to have bonds placed, without further sale with retail buyers.” During the retail order period, J. Murphy placed at least four separate orders with four separate firms, specifying that her orders were “retail” even though the orders were intended for broker-dealers and not for individuals, bank trusts, or investment advisors. To increase the likelihood that she would receive an allocation, J. Murphy also fraudulently provided a different Puerto Rico zip code with each of her four retail orders even though she knew she did not live or reside in Puerto Rico.

83. In another instance, on or about September 28, 2015, a California issuer held a retail order period for new issue bonds. The pricing wire specified that California retail orders would receive the highest priority, and defined “retail order” as an “order placed for an account of an individual, or a bank trust, investment advisor or money manager acting on behalf of an individual.” The pricing wire further required that “[t]he investor’s zip code must be included with all Retail Orders.” During the retail order period, J. Murphy placed at least two separate orders with different firms, even though the orders were intended for broker-dealers and not for individuals, bank trusts, investment advisors, or money managers. To increase the likelihood that she would receive an allocation, J.
Murphy also fraudulently supplied a different California state zip code with each of her two orders even though she knew she did not live or reside in California.

84. In addition to placing retail orders using fraudulent zip codes, J. Murphy took steps to mislead issuers and/or underwriters by hiding her flipping of new issue bonds, including by asking Riccardi to hide subsequent trades of bonds J. Murphy purchased on behalf of RMR.

85. For example, on January 15, 2015, J. Murphy wrote to Riccardi that she had received allotments in multiple maturities but that the underwriter was “really worried about seeing” the bonds trade early, so J. Murphy asked Riccardi to “hide them.”

86. Similarly, on or around December 14, 2011, an underwriter to whom J. Murphy had submitted an order questioned her about whether her order was related to another similar order the firm had received, and/or whether J. Murphy intended to flip any bonds she received. J. Murphy falsely told the underwriter that her order was not related to the other similar order, and then reported the incident to Riccardi to warn him that if J. Murphy was allotted bonds, the underwriter would be “on the witch hunt” for flipping activity.

h. Riccardi and RMR

87. Riccardi, operating as RMR (which he controlled), repeatedly misrepresented his zip code when placing orders for new issue bonds during retail order periods.

88. For example, on or about August 24, 2015, a New Jersey issuer held a retail order period for new issue bonds. The pricing wire defined “retail” as “an order placed on behalf of an individual, or a bank trust department/investment advisor acting on behalf of an individual,” and stated that “retail orders must be valid ‘going away’ orders.”1 The

1 “Going away” refers to orders placed by investors, who typically buy and hold new issue bonds, rather than brokers or dealers, who are purchasing bonds for their inventory in order to trade them. See MSRB Glossary, “Going Away Order,” available at http://www.msrb.org/glossary/definition/going-away-order.
pricing wire also specified that orders from New Jersey retail customers would receive the highest priority. To increase the likelihood that he and RMR would receive an allocation, Riccardi placed an order during the retail order period and fraudulently provided a New Jersey zip code even though he knew he did not qualify as retail and did not live or reside in New Jersey.

89. In addition to placing retail orders using fraudulent zip codes, Riccardi, operating as RMR, took steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds, including by combining allotments he received from multiple Participants before re-selling the bonds to RMR Customers. For example, on November 15, 2012, Derryberry reported to Riccardi that he got full allocations but that he “ha[s] to hide them” because his broker was told “to make sure they don’t flip.” Riccardi responded that he would hide the trade by “combin[ing] with other[]” allotments. Similarly, on May 21, 2015, Derryberry reported to Riccardi that he had received an allotment but asked if Riccardi could “bundle the[] [bonds] or hide them a bit on the sell side.” Riccardi responded that he would do so.

i. Tran

90. Tran repeatedly misrepresented his zip code when placing orders for new issue bonds during retail order periods.

91. For example, on or about September 9, 2015, an Oklahoma issuer held a retail order period for new issue bonds. The pricing wire stated that Oklahoma retail individual orders would be afforded the highest priority, and it defined “individual order” as an order “for direct placement to an account of an individual …. “ To increase the likelihood that he would receive an allocation, Tran placed an order during the retail order period, fraudulently stating that it was “for” a zip code located in Oklahoma, even though he knew that the order was not intended for direct placement to an individual’s account and knew that he did not live or reside in Oklahoma.

92. In addition to placing retail orders using fraudulent zip codes, Tran took steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds,
including by placing orders under multiple DBA names even though he was actually purchasing the bonds on behalf of RMR, who would flip them to an RMR customer under another DBA name distinct from the DBA name Tran used to place the order. Tran engaged in this deceptive conduct to prevent underwriters from discovering that he was flipping new issue bonds.

\( j. \) **Weiner**

93. Weiner repeatedly misrepresented his zip code when placing orders for new issue bonds during retail order periods.

94. For example, on or about October 23, 2012, an Indiana issuer held a retail order period for new issue bonds. The pricing wire defined Indiana retail as “an individual resident in the State of Indiana” and required zip codes with all Indiana retail orders. To increase the likelihood that he would receive an allocation, Weiner placed an order during the retail order period and fraudulently provided an Indiana state zip code with his order even though he knew that the order was not for a resident of Indiana and that he did not live or reside in Indiana.

95. In addition to placing retail orders using fraudulent zip codes, Weiner took steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds, including by asking Riccardi to hide subsequent trades of bonds Weiner purchased on behalf of RMR. For example, on March 30, 2012, Weiner asked Riccardi to give him “protection” when flipping the bonds Weiner was allocated because Weiner had represented the bonds would be “going away.” Riccardi agreed to “batch” Weiner’s allocation with other allotments so the quantity given to Weiner would not be traceable.

**C. RMR, Frost, Kirschenbaum, and Riccardi Aided and Abetted Representative in Placing Fraudulent Orders.**

96. In addition to the fraudulent conduct described above, RMR, Frost, Kirschenbaum, and Riccardi worked in tandem with Representative from Firm A to increase their allotments of new issue bonds through fraudulent retail orders submitted to issuers and/or underwriters by Firm A.
97. In particular, Representative knowingly placed fraudulent retail orders for these Defendants by submitting fraudulent zip codes with their orders, which he obtained from these Defendants or on his own by looking up zip codes for the relevant jurisdiction.

98. Representative placed these retail orders even though he knew RMR, Frost, Kirschenbaum, and Riccardi did not qualify for retail priority. Moreover, Representative knew that the misrepresentations, i.e., the fraudulent zip codes he submitted along with his misrepresentations that RMR, Frost, Kirschenbaum, and Riccardi were eligible to place retail orders, would be communicated to the underwriter and/or issuer for use in deciding whether to allocate bonds to these Defendants.

99. By providing Representative with orders during the retail order period that contained fraudulent zip codes and by submitting orders during the retail order period despite knowing that they did not qualify as retail, RMR, Frost, Kirschenbaum, and Riccardi knowingly or recklessly provided substantial assistance to Representative’s fraudulent conduct.

100. Additionally, when RMR, Frost, Kirschenbaum, or Riccardi received an allotment against a retail order Representative had placed for them using a fraudulent zip code, Representative often asked them to disguise the flipping of the allotted bonds to deceive the underwriter or issuer. RMR, Frost, Kirschenbaum, and Riccardi complied with these requests to disguise their flipping by altering quantities, prices, or times reflected on trade tickets in the manner described above.

101. RMR, Frost, Kirschenbaum, and Riccardi knowingly and/or recklessly assisted Representative’s deceptive efforts to hide his fraudulent retail orders from underwriters and issuers because they financially benefitted from Representative’s fraudulent misrepresentations. In particular, as a result of his fraud, they were able to obtain more allocations of new issue bonds (through bogus retail orders), which bonds they later flipped to RMR customers at a profit. Moreover, assisting Representative’s fraud ensured that he would continue to submit fraudulent orders to benefit these Defendants financially in the future.
102. Instances in which RMR, Frost, Kirschenbaum, and Riccardi knowingly and/or recklessly assisted Representative’s fraud include the following:

a. On January 28, 2014, Representative notified Frost that Frost would receive $125,000 of new issue bonds, but told Frost that Representative had been “warned on this one … no flipping … please break-up, bury, disguise, etc. etc. etc.” Frost responded that he would do so. Frost’s agreement to disguise the flip of the $125,000 of bonds Representative had sold him, by breaking up the quantity or other means, substantially assisted Representative by inhibiting issuers’ and underwriters’ ability to trace the fraudulently obtained allotment of bonds flipped by Frost back to Representative.

b. Similarly, on June 13, 2014, Representative notified Kirschenbaum that Kirschenbaum would receive $100,000 of new issue bonds, and asked Kirschenbaum to “marry” the bonds with “other orders” before flipping them. Kirschenbaum agreed to do so. Kirschenbaum’s agreement to combine the $100,000 of bonds he received from Representative with another allotment before flipping the bonds substantially assisted Representative by inhibiting issuers’ and underwriters’ ability to trace the fraudulently obtained allotment of bonds flipped by Kirschenbaum back to Representative, because the quantity of bonds sold by Kirschenbaum would be different than the quantity of bonds Representative sold to Kirschenbaum.

c. In another example, on April 23, 2015, Representative notified Riccardi that his RMR account would receive bonds released by a California issuer but that because Firm A put the order in as “Calif[ornia] retail” the bonds “must disappear.” Representative asked that Riccardi “marry” the bonds with “other orders” before flipping them. Riccardi agreed to do so. Riccardi’s agreement to combine the bonds he received from Representative with another allotment before flipping the bonds substantially assisted Representative by inhibiting issuers’ and
underwriters’ ability to trace the fraudulently obtained allotment of bonds flipped by Riccardi back to Representative.

D. Defendants’ Conduct Harmed Municipal Issuers and Investors.

103. Defendants’ conduct harmed municipal issuers by, for example, violating their established rules and restrictions concerning retail orders for particular offerings.

104. Defendants’ conduct also harmed retail and other investors who legitimately qualified for higher priority treatment, but were unable to purchase new issue bonds in oversubscribed offerings because bonds that could otherwise have been used to fill their orders were allocated to Defendants. In addition, because Defendants charged a pre-arranged commission when they flipped bonds irrespective of the bonds’ market value, their activity sometimes artificially inflated prices such that retail and other investors purchasing these bonds in the secondary market would have to pay a higher price than they otherwise would have if the bonds had not been flipped.

TOLLING AGREEMENTS

105. All Defendants except Gounaud signed, on or before February 14, 2017, tolling agreements with the Commission that specified a period of time (a “tolling period”) in which “the running of any statute of limitations applicable to any action or proceeding against [Defendants] authorized, instituted, or brought by…the Commission…arising out of the [Commission’s investigation of Defendants’ conduct], including any sanctions or relief that may be imposed therein, is tolled and suspended….” Each tolling agreement further provides that Defendants and any of their agents or attorneys “shall not include the tolling period in the calculation of the running of any statute of limitations or for any other time-related defense applicable to any proceeding, including any sanctions or relief that may be imposed therein, in asserting or relying upon any such time-related defenses.” All Defendants except Gounaud subsequently signed additional tolling agreements to extend the tolling period.
106. Collectively, these agreements tolled the running of any limitations period or any other time-related defenses for all Defendants except Gounaud from November 28, 2011 to present.

FIRST CLAIM FOR RELIEF

Fraud in Connection With the Purchase of Securities

Violations of Section 10(b) of the Exchange Act and Rules 10b-5(a), (b) and (c)
(Against Defendants RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner)

107. The Commission realleges and incorporates by reference paragraphs 1 through 106 above.

108. RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner, by engaging in the conduct described above in paragraphs 50 through 95, directly or indirectly, in connection with the purchase or sale of a security, by the use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

   (a) employed devices, schemes, or artifices to defraud;

   (b) made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

   (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

109. By engaging in the conduct described above, RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a), (b), and (c) thereunder, 17 C.F.R. §§ 240.10b-5(a)-(c).
SECOND CLAIM FOR RELIEF

Fraud in Connection With the Purchase of Securities
Aiding and Abetting Violations of Section 10(b)
of the Exchange Act and Rule 10b-5(b)

(Against Defendants RMR, Frost, Kirschenbaum, and Riccardi)

110. The Commission realleges and incorporates by reference paragraphs 1 through 106 above.

111. By engaging in the conduct described above in paragraphs 96 through 102, Representative, directly or indirectly, in connection with the purchase or sale of a security, and by the use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter, made untrue statements of a material fact or omitted to state a fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

112. As alleged above in paragraphs 96 through 102, RMR, Frost, Kirschenbaum, and Riccardi knowingly or recklessly provided substantial assistance to Representative’s violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder in connection with fraudulent retail orders that Representative submitted on behalf of RMR, Frost, Kirschenbaum, and Riccardi.

113. By engaging in the conduct described above, RMR, Frost, Kirschenbaum, and Riccardi aided and abetted, and unless enjoined will continue to aid and abet, violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R. § 240.10b-5(b).
THIRD CLAIM FOR RELIEF
Violations of MSRB Rule G-17
(Against Defendants RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner)

114. The Commission realleges and incorporates by reference paragraphs 1 through 106 above.

115. MSRB Rule G-17 provides in relevant part that, in the conduct of its municipal securities business, every broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

116. As alleged above in paragraphs 35 through 102, RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner, acting as brokers, unreasonably (1) failed to deal fairly with persons and entities, and/or (2) engaged in deceptive, dishonest, or unfair practices in violation of MSRB Rule G-17.

117. By engaging in the conduct described above, RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner violated, and unless restrained and enjoined will continue to violate, MSRB Rule G-17.

FOURTH CLAIM FOR RELIEF
Failure to Register as a Broker-Dealer
Violations of Section 15(a)(1) of the Exchange Act
(Against All Defendants)

118. The Commission realleges and incorporates by reference paragraphs 1 through 106 above.

119. Defendants, by engaging in the conduct described above in paragraphs 35 through 102, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of

120. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 15(a)(1) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that Defendants committed the alleged violations.

II.

Issue judgments permanently enjoining RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner, and their agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and MSRB Rule G-17.

III.

Issue judgments permanently enjoining RMR, Frost, Kirschenbaum, and Riccardi, and their agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from aiding and abetting violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R. § 240.10b-5(b).

IV.

Issue judgments permanently enjoining all Defendants, and their agents, servants, employees, and attorneys, and those persons in active concert or participation with any of
them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a).

V.

Issue judgments permanently enjoining Defendants from, directly or indirectly, opening or maintaining any brokerage account(s) without providing the relevant brokerage firm(s) a copy of this Complaint and a copy of any final judgment entered against them in this action.

VI.

Order Defendants to disgorge ill-gotten gains from their illegal conduct, together with prejudgment interest thereon.

VII.

Order Defendants to pay civil penalties under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

VIII.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

IX.

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: August 14, 2018

/s/ Nicholas A. Pilgrim

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