Examination and Enforcement Updates
Thursday, September 13
10:10 a.m. – 11:00 a.m.

This session covers FINRA's fixed income-related examination priorities and findings. Panelists highlight common examination findings and recent enforcement actions, and share lessons learned.

Moderator:
Gina Petrocelli
Chief Counsel
FINRA Enforcement

Panelists:
William Downey
Principal Examiner, Sales Practice
FINRA New York District Office

Tina Gubb
Chief Counsel
FINRA Enforcement

Joseph Schwetz
Senior Director, Quality of Markets
FINRA Market Regulation, Fixed Income

Examination and Enforcement Updates Panelist Bios:

Moderator:

Gina Petrocelli is Chief Counsel in FINRA's Department of Enforcement and a member of FINRA's Fixed Income Committee. She manages a team of attorneys handling actions relating to sales practice, anti-money laundering and other investor protection and regulatory issues. Ms. Petrocelli previously served as a Deputy Regional Chief Counsel for the New York Region, and as an Enforcement Director and Senior Counsel in New York. Prior to joining FINRA during 2010, Ms. Petrocelli was a litigator at Latham & Watkins LLP and at Cravath, Swaine & Moore LLP. Ms. Petrocelli graduated from Harvard Law School in 2002 and is a member of the bar in New York. She obtained her B.A. in Government from Harvard College in 1999.

Panelists:

William Downey is Principal Examiner on the Fixed Income Specialist team within FINRA Member Regulation. Mr. Downey is responsible for examining the fixed income business lines at member firms to ensure compliance with relevant MSRB, FINRA and SEC rules. He has worked as a trader on both the sell side of the municipal market with Oppenheimer & Co., Inc. and Morgan Stanley Wealth Management and on the buy side with AllianceBernstein LP. Mr. Downey holds a bachelor's degree in economics from Wake Forest University.

Tina Salehi Gubb is Chief Counsel in FINRA's Department of Market Regulation. She is responsible for supervising a team of attorneys who enforce cases relating to market integrity and customer protection issues. With regard to fixed income products, Ms. Gubb has brought enforcement actions on FINRA's behalf involving systemic best-execution violations, excessive markups/markdowns, customer suitability issues, transaction reporting and related supervisory deficiencies. Ms. Gubb has been with FINRA since 1998. She is a graduate of James Madison University and the University of Richmond, School of Law.

Joseph Schwetz is Senior Director in FINRA's Market Regulation Department. Mr. Schwetz manages the Fixed Income Reporting Teams, which conduct data integrity surveillance for securitized products, corporate, agency, municipal and U.S. Treasury Securities. Specifically, he is responsible for overseeing the automated surveillance patterns concerning transaction reporting to TRACE, the Municipal Securities Rulemaking Board's RTRS and SHORT systems. He is responsible for handling fixed income transaction reporting questions from FINRA staff, as well as from member firms. Previously, Mr. Schwetz held several positions in the Fixed Income Section, primarily dealing with data integrity surveillance. Mr. Schwetz joined FINRA in 2006. He has a bachelor's degree in business administration from Elon College.

2018 Fixed Income Conference
September 13, 2018 | New York, NY

Examination and Enforcement Updates

Panelists

Moderator

- Gina Petrocelli, Chief Counsel, FINRA Enforcement

Panelists

- William Downey, Principal Examiner, Sales Practice, FINRA New York District Office
- Tina Gubb, Chief Counsel, FINRA Enforcement
- Joseph Schwetz, Senior Director, Quality of Markets, FINRA Market Regulation, Fixed Income

Market Regulation Update

TRACE Compliance

- **TRACE Report Cards**
- **Report Card Outlier Emails – TRACECompliance@finra.org**

Treasuries for TRACE

- **Trade Reporting Surveillance Patterns**
  - Late Trade Reporting
  - Accuracy of Execution Times
  - Accuracy of Reporting of Counter Parties

Market Regulation Update

Rapid Remediation Approach

- **Reviews in scope**
  - Late Trade, Execution Times, and Dealer Mismatch for all TRACE-eligible securities
  - Late Trade, Execution Times, and Negative Yield for municipal securities
- **Monthly pattern run**
- **Promptly contact firms informally to review the exceptions**
- **Firms are expected to respond by correcting any systems issues**

Member Supervision Update

- **Municipal Advisor Rule**
  - Sales & Trading
  - FINRA Rule 3110 & MSRB Rule G-27
- **529 Plans**
  - Books and Records
  - Tax Law Implications

Member Supervision Update

- **Conflicts of Interest Disclosures**
  - Underwriting
  - Municipal Advisor
- **Taxable FI**
  - Esoteric products
  - Rate environment
- **MSRB Annual Advisory**

Enforcement Update

- Changes to FINRA Enforcement Structure
- Enforcement Guiding Principles

Enforcement Update

Areas of Focus

- Restitution
- Market Integrity
- Supervision

Enforcement Update

Recent and Illustrative Disciplinary Actions:

- Gates Capital Corporation, No. 2016050811301
- Murray Sinclaire, No. 2015043591702
- George K. Baum & Company, No. 2015043587201
- Mehran Tazhibi, No. 2016048911301

Examination and Enforcement Updates
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Resources

General

- FINRA 2018 Annual Examination Priorities Letter

  www.finra.org/sites/default/files/2018-regulatory-and-examination-priorities-letter.pdf

Member Supervision

- MSRB Compliance Advisory for Brokers, Dealers, and Municipal Securities Dealers (August 2018)

  www.msrb.org/~/media/Files/Regulatory-Notices/Announcements/2018-17.ashx

- MSRB Compliance Advisory for Municipal Advisors (August 2018)

  www.msrb.org/~/media/Files/Regulatory-Notices/Announcements/2018-18.ashx??n=1

- SEC Guidance on MA Rules (September 2017)

  www.sec.gov/info/municipal/mun-advisors-faqs.shtml

- Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (August 2012)

  http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2#_D54ECAF7-2CE6-4ED9-BB05-3C9B32FB7BF4

- MSRB 529 Plan Investor's Guide

  www.msrb.org/msrb1/pdfs/MSRB-529-Investor-guide.pdf

Market Regulation

- FINRA *Regulatory Notice 16-30, FINRA Reminds Firms of their Obligation to Report Accurately the Time of Execution for Transactions in TRACE-eligible Securities* (August 2016)

  www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-30.pdf

- TRACE Frequently Asked Questions (FAQ)

  www.finra.org/industry/trace/trace-faq

- TRACE Report Cards

  www.finra.org/industry/trace-report-cards

Enforcement

Cited Cases available at *http://disciplinaryactions.finra.org/*

- Gates Capital Corporation, No. 2016050811301
- Murray Sinclaire, No. 2015043591702
- George K. Baum & Company, No. 2015043587201
- Mehran Tazhibi, No. 2016048911301

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015043587201

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: George K. Baum & Company, Respondent
Member Firm
CRD No. 36354

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent George K. Baum & Company ("GKB" or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. GKB hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

GKB became a FINRA member on April 25, 1994, and is headquartered in Kansas City, Missouri. GKB employs 138 registered persons at 30 branch offices. The Firm engages in a general securities business.

RELEVANT DISCIPLINARY HISTORY

The Firm has no relevant disciplinary history.

OVERVIEW

Between February 2014 and December 2014 (the "Relevant Period"), GKB improperly received certain reimbursements from municipal bond proceeds for expenses incurred during three municipal bond rating trips that were not reasonably related to the business purpose of the trips. Through this conduct, GKB violated MSRB Rule G-17.

During the Relevant Period, GKB also failed to establish and maintain a supervisory system for ratings trip expenses that was reasonably designed to ensure compliance with MSRB Rules. Specifically, GKB reviewed and approved certain ratings trip expenses without fully reviewing all of the relevant information, such as itineraries and agendas, and was therefore unable to determine whether all of the expenses were reasonably related to the business purpose of the trips. GKB also failed to review ratings trip expenses charged to certain issuers to ensure that expenses unrelated to the business of the ratings trips were not collected from municipal bond proceeds. Through this conduct, GKB violated MSRB Rule G-27.

FACTS AND VIOLATIVE CONDUCT

GKB Improperly Charged Three Municipal Issuers for Certain Ratings Trip Expenses Unrelated to the Business Purpose of the Trips

During the Relevant Period, GKB sought and received reimbursements from municipal bond offering proceeds for certain ratings trips expenses that were unrelated to the business purposes of the trips and, as such, excessive expenses.[1]

The May 2014 Ratings Trip – Additional Stays, Meals and Entertainments

In December 2013, a city retained GKB as its financial advisor for bond projects related to a maximum security detention facility (the "City"). To that end, in connection with a planned issuance of general obligation bonds, a GKB representative planned a ratings trip to New York City for himself and three other issuer personnel. The ratings trip was scheduled for Thursday, May 15, 2014 through Saturday May 17, 2014. The attendees had one meeting scheduled for Thursday, May 15th, and three meetings scheduled for Friday, May 16th. The GKB representative and the issuer personnel planned to return to their residences on May 17th.

The total cost of the ratings trip was $16,626.98. The GKB representative estimated the costs of the ratings trip unrelated to the business purpose of the trip totaled $1,626.98, deducted that amount, and then billed the city $15,000 for the trip. The City's taxpayers ultimately paid the ratings trip expenses of $15,000 as a cost of issuance. In fact, $3,723.48 of the trip's expenses billed to the City were unrelated to the business purpose of the ratings trip. These expenses included: (1) flight changes and hotel expenses unrelated to the ratings trip; (2) tickets to a Broadway musical for the GKB representative and one issuer personnel; (3) tickets to a baseball game for the GKB representative and two issuer personnel; and (4) flight changes and additional hotel stays for the GKB representative and two issuer personnel to attend the baseball game (the original game they planned

[1] *See DOE v. Gardnyr Michael Capital, Inc., et. al.*, Discip. Proc. No. 2011026664301 (January 28, 2014).

to attend was rained out).[2]

The total costs of the ratings trip unrelated to the business purpose of the trip were $5,350.46. Even with the deduction of $1,626.98, GKB improperly billed the City $3,723.48 for costs unrelated to the business purpose of the trip as a cost of issuance.[3]

The November 2014 Ratings Trip –Additional Stay for a GKB representative

In early 2014, a county retained GKB as its financial advisor for an issuance of approximately $2 million in debt (the "County"). In connection with the issuance, the GKB representative planned a ratings trip to San Francisco, California for himself and three other issuer personnel. The County had meetings with ratings agencies scheduled for Monday, November 17, 2014. The issuer personnel flew to San Francisco on Sunday, November 16th, and stayed one night at the Westin Hotel. They departed on November 17th.

The GKB representative and his spouse flew to San Francisco on Friday, November 14, 2014 and departed on November 17th with the issuer personnel. The GKB representative and his spouse stayed at the St. Regis Hotel for three nights, and the stay on Friday and Saturday was unrelated to the business purpose of the ratings trip. The cost of the ratings trip totaled $7,577.35, and the GKB representative estimated that the costs of the ratings trip unrelated to the business purpose of the trip totaled $1,577.35. GKB billed the county a total of $6,000 for the trip, which was ultimately paid by the County's taxpayers as a cost of issuance.

In fact, a portion of the $6,000 billed to the County for ratings trip expenses included part of the GKB representative's weekend stay with his spouse in San Francisco. GKB improperly billed the County for $1,577 for hotel expenses incurred by the GKB representative as a cost of issuance.[4]

The February 2014 Ratings Trip – Additional Guest Expenses

GKB was retained as the financial advisor for the issuance of $90 million in general obligation bonds by a school district (the "School District"). A GKB representative scheduled a ratings trip to San Francisco for the issuer personnel and their spouses, as well as the GKB representative and his spouse. The trip was

[2] Under MSRB Rule G-20(d), GKB was permitted to host issuer personnel for theatrical, sporting and other entertainments during the ratings trip. Passing the costs of these entertainments to taxpayers as an expense of the ratings trip, however, violated MSRB Rule G-17. *See id.*

[3] On October 12, 2017, GKB issued a check to the City for $3,723.48.

[4] On October 26, 2015, GKB issued a check to the County for $1,577.

scheduled for February 6 through February 8, 2014. The ratings trip costs totaled $6,225.59. The issuer personnel from the School District reimbursed GKB for their spouses' airfares, meals, and transportation expenses during the ratings trip. GKB deducted an additional $191.27 from the ratings trip expenses to cover, in part, the representative's spouse's expenses, but did not deduct the total amount related to the spouse's expenses. GKB billed the School District $4,725.92 for the ratings trip. Those ratings trip expenses were ultimately paid by the school district's taxpayers as a cost of issuance.

The total cost for the GKB representative's spouse to attend the ratings trip was $401.55, including airfare, meals and transportation expenses. Even with the deduction of $191.27 from the ratings trip expenses, GKB improperly billed the School District $210.28 for the GKB representative's spouse to attend the ratings trip as a cost of issuance.[5]

GKB violated MSRB Rule G-17

MSRB Rule G-17 states that municipal securities dealers "shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice." The duty of fair dealing imposed by Rule G-17 governs the obligations of municipal securities dealers to issuers.

In a January 2007 Interpretive Notice, the MSRB stated that dealers "should be aware that characterizing excessive or lavish expenses for the personal benefit of issuer personnel as an expense of the issue may, depending on all the facts and circumstances, constitute a deceptive, dishonest or unfair practice."[6]

In a September 2009 Reminder Notice, the MSRB stated that Rule G-17 "may apply in connection with certain payments made and expenses reimbursed during the municipal bond issuance process for excessive or lavish entertainment or travel expenses."[7]

GKB failed to deal fairly with the City, the County, and the School District when the Firm sought and obtained reimbursement from municipal bond proceeds for certain expenses from three ratings trips that were unrelated to the business purpose of the trips. By virtue of the foregoing, GKB violated MSRB Rule G-17.

GKB Failed to Reasonably Supervise Ratings Trips

MSRB Rule G-27(b) requires municipal dealers to establish and maintain a supervisory system that is reasonably designed to achieve compliance with

[5] On December 17, 2015, GKB issued a check for $210 to the School District.

[6] *Dealer Payments in Connection with the Municipal Securities Issuance Process* (January 29, 2007).

[7] *Reminder Notice on Fair Practice Duties to Issuers of Municipal Securities* (September 29, 2009).

applicable securities laws, regulations, and MSRB Rules. Rule G-27(c) requires each municipal dealer to adopt, maintain, and enforce WSPs that are reasonably designed to ensure that the conduct of municipal securities activities is in compliance with applicable securities laws, regulations, and MSRB Rules.

During the Relevant Period, the GKB supervisor responsible for reviewing and approving all ratings trips expenses did not receive or review the itineraries or agendas in connection with the expense reports. Without this information, the supervisor could not determine whether the ratings trip expenses were both reasonable and related to the business purposes of the trips. Further, the supervisor did not review the ratings trip expenses actually charged to the issuers to ensure that expenses unrelated to the ratings trips were not billed as a cost of issuance and passed on to taxpayers.

The Firm's written supervisory procedures ("WSPs") for ratings trips during the Relevant Period stated: "Entertainment that could be perceived as lavish or extraordinary, such as trips, sporting events, bond rating trips, or closing dinners involving customers, potential customers, issuers or any other persons or entities must be preapproved by Senior Management." These WSPs failed to reasonably address ratings trips expenses because they did not contain any specific guidelines regarding expense limits, non-reimbursable expenses, prohibited expenses, and permissible charges to issuers. Also, GKB relied on its representatives to determine whether preapproval of expenses was required, but did not provide training or implement any procedures or processes to ensure that its representatives appropriately identified expenses for preapproval.

By virtue of the foregoing conduct, GKB violated MSRB Rule G-27.

B. GKB also consents to the imposition of the following sanctions:

1. A censure; and

2. A fine of $35,000 ($20,000 of which is attributable to the violation of MSRB Rule G-17 and $15,000 of which is attributable to the violation of MSRB G-27).

GKB agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. GKB has submitted an Election of Payment form showing the method by which GKB proposes to pay the fine imposed.

GKB specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

GKB specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

A. To have a Complaint issued specifying the allegations against the Firm;

B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;

C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, GKB specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

GKB further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

GKB understands that:

A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and

C. If accepted:

1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against GKB;

2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. GKB may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. GKB may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. GKB may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. GKB understands that the Firm may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

Respondent George K. Baum & Company

12/07/2017
Date (mm/dd/yyyy)

By: William H. Coughlin
Title: President

Reviewed by:

Jeffrey Ziesman
Counsel for Respondent
Bryan Cave, LLP
1200 Main Street, Suite 3800
Kansas City, MO 64105-2122
Telephone: (816) 374-3225
Email: jeff.ziesman@bryancave.com

Accepted by FINRA:

01/03/2018
Date

Signed on behalf of the
Director of ODA, by delegated authority

Seema Chawla, Senior Regional Counsel
FINRA Department of Enforcement
120 West 12th Street, Suite 800
Kansas City, MO 64105
Telephone: (816) 802-4712
Facsimile: (816) 421-4519
Email: seema.chawla@finra.org

GKB Corrective Action Statement

GKB reimbursed each of the issuers as soon as possible after learning of the improper reimbursements of costs and confirming the appropriate amounts with FINRA. GKB changed its Written Supervisory Procedures in December 2015 to address the issues identified regarding expenses incurred on ratings trips by FINRA during their 2014 cycle examination, and provided training to all appropriate personnel regarding expenses incurred on ratings trips in December 2015 and January 2016.

This Corrective Action Statement is submitted by GKB. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20150435917~~02~~

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Murray Sinclaire, Respondent
General Securities Representative
General Securities Principal
Municipal Securities Principal
CRD No. 1365335

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. I hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Murray Sinclaire ("Sinclaire") first became registered with a FINRA member firm in 1985. In 1989, he became registered with Ross, Sinclaire & Associates, LLC ("RSA" or the "Firm"), as General Securities Representative, General Securities Principal and Municipal Securities Principal, among other categories. Sinclaire indirectly owns RSA through ownership of its holding company, and was the President, CEO and managing member from 1989 until June 2016, when he was suspended in a supervisory capacity by the Securities Exchange Commission ("SEC"). He is currently registered with RSA.

RELEVANT DISCIPLINARY HISTORY

On June 23, 2016, the SEC entered into an Offer of Settlement (Docket No. 3-17315) with Sinclaire for willfully aiding and abetting and causing RSA's violations of Section 15(b)(7) of the Exchange Act and SEA Rule 15b7-1 for allowing a person who was not Series 7 licensed to conduct a securities business indirectly through that person's spouse who Sinclaire employed. Sinclaire also allowed the non-registered person to set transaction charges up to four times higher than the typical charge at the Firm. In the Offer, Sinclaire agreed to a suspension in a supervisory capacity for 12 months and a $50,000 fine.

On April 25, 1997, the NASD entered into an AWC (Docket No. C8B970005) with Sinclaire for hosting a fundraising reception for a candidate for Kentucky Governor when his member firm was engaged in, or seeking to engage in, municipal securities business with Kentucky, in violation of MSRB Rule G-27(c). Sinclaire agreed to an $8,000 fine.

OVERVIEW

Sinclaire failed to ensure that RSA personnel disclosed all material facts in documents used to sell an offering in which RSA was the sole underwriter. Sinclaire also failed to ensure compliance with MSRB rules and the Firm's written supervisory procedures ("WSPs"), which required such disclosures. Therefore, Sinclaire violated MSRB Rules G-27 and G-17.

FACTS AND VIOLATIVE CONDUCT

1. The Firm's Supervisory Structure and Written Supervisory Procedures

Sinclaire is the owner of the Firm, and through June 2016 was the President, Managing Member and CEO of the Firm. As such, the Firm's WSPs made clear that Sinclaire had ultimate responsibility to ensure that the Firm was at all times complying with the rules of the Municipal Securities Rulemaking Board ("MSRB"), and acting in accordance with its WSPs.

Among other things, the WSPs delegated to Sinclaire the responsibility of ensuring that RSA disclosed to customers all material facts concerning securities transactions, including a complete description of the securities, consistent with MSRB Rule G-17. Sinclaire was also the direct supervisor of RSA personnel responsible for the due diligence and sales regarding municipal or private offerings sold or underwritten by the Firm. Thus, Sinclaire had ultimate supervisory responsibility for ensuring that all material facts were properly disclosed to RSA's customers in connection with such offerings.

2. Material Omissions In Connection with Municipal Offering

a. Background

In 1993, a municipal issuer ("Issuer") issued notes in the amount of $2,700,000 for the stated purpose of acquiring, constructing, and equipping fairgrounds, a convention center, and related parking facilities.[1] Ultimately, the property acquired by the County, and the facilities built by the County, housed a horserace track ("Racetrack"). Since 1993, the notes have been refinanced and renewed multiple times, with new offerings conducted in 1999, 2004, 2007, 2011, 2015, and 2016. Under the terms of each of the new offerings, the proceeds from the sale of the new notes were used to retire and pay in full the outstanding principal and interest of the previously issued notes. For each of these offerings, RSA acted as the financial advisor and/or as the underwriter.

County PPC leased one of three tracts of property used in connection with operating the Racetrack to the County (the "Lease"), which in turn has subleased the property to an entity called "ARI," and its predecessors (the "Sublease").[2] ARI owns and operates the Racetrack. Sinclaire has owned 100% of ARI since April 2015 and serves as a managing member of ARI, pursuant to the terms of a 2013 agreement. Prior to that time, Sinclaire owned approximately 40% of ARI.

ARI has experienced gradually declining operations since 2000, and for the last ten years, its expenses have exceeded its revenues. Since at least 2011, ARI's auditor has issued a "going concern" notation in its financial statements. Due to increasing operational expenses and declining revenues and an inability to meet current obligations, ARI has borrowed money via unsecured loans from Sinclaire and his deceased business partner. In light of its financial difficulties, among other things, in 2012 ARI began discussions for the sale of some or all of its assets to another racing company (the "Potential Purchaser"). These negotiations resulted in the execution of at least two letters of intent, one dated January 29, 2013 and the other dated November 25, 2014.

b. The Subject Offering

In April 2015, RSA acted as the sole underwriter for the Issuer's April 25, 2015,

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[1] A particular county in Kentucky ("County") issued these notes via a non-profit, non-stock public and governmental corporation whose principal purpose was to act as an agency and instrumentality of the County in the financing and acquisition of public improvements and public projects for the County ("County PPC"). County PPC was the named Issuer of these notes, as well as the rest of the offerings referenced in this AWC.

[2] The Racetrack is located on a 50.2 acre parcel that is subdivided into three tracts: (1) Tract I consists of approximately 35.6 acres owned by ARI; (2) Tract II consists of approximately 14.487 acres owned by County PPC; and (3) Tract III consists of approximately 4,922 square feet owned by ARI. The physical Racetrack and stables are located on Tracts I and III, and the grandstand and parking lot are located on Tract II.

private placement offering, which raised $2,120,000 from investors (the "2015 Offering" or the "2015 Notes"). The proceeds of the 2015 Notes were used to retire the notes issued through the Issuer's 2011 offering. The 2015 Notes had a one-year term. The 2015 Offering proceeds provided ARI with needed cash flow to, among other things, make lease payments to the County, while ARI continued negotiating the transaction with the Potential Purchaser. That transaction, however, never came to fruition. Therefore, on April 25, 2016, the Issuer conducted another private placement offering, using the proceeds to pay off the 2015 Notes.[3]

The Private Placement Memorandum ("PPM") for the 2015 Offering was drafted by the Issuer, but was reviewed by designated persons at RSA who Sinclaire directly supervised. The PPM failed to disclose material facts to investors, as follows:

- The PPM failed to disclose that: (a) the County subleased the property and facilities to ARI, and (b) the County's Lease payments to the Issuer were actually derived solely from Sublease payments made by ARI to the County. In fact, the PPM did not mention ARI or the Sublease at all.

- The PPM did not disclose any information about the dire financial condition of ARI, or the proposed sale of ARI's assets to the Potential Purchaser.

- The PPM failed to disclose Sinclaire's ownership and management of RSA, his ownership and management of ARI, and the fact that ARI was a beneficiary of the Offering proceeds though its sublease from the County PPC.

The above were material facts that should have been disclosed in the PPM.

Sinclaire was the person ultimately responsible for ensuring compliance with MSRB rules, including the disclosure requirements of MSRB Rule G-17, and with the Firm's related WSPs. Sinclaire delegated responsibility for the review of the PPM to others at the Firm, but he was the owner of ARI and, therefore, had direct, personal and particular knowledge of his own conflicts of interest, the Sublease of the property to ARI and adverse information about ARI, which he should have ensured was disclosed in the PPM. Sinclaire was negligent in his failure to do so. By virtue of the foregoing, Sinclaire violated MSRB Rules G-27 and G-17.

[3] Effective June 30, 2017, the County and ARI finalized a transaction pursuant to which all noteholders in the April 2016 offering were paid in full and the notes were extinguished.

B. I also consent to the imposition of the following sanctions:

- a 6-month suspension from associating with any FINRA registered firm in any principal capacity,
- a requirement to requalify as a municipal securities principal by passing the requisite examination (Series 53) prior to acting in that capacity with any FINRA member, and
- a fine of $35,000.

I agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member in a principal capacity, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in a principal capacity during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because I am subject to a statutory disqualification during the suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

A. To have a Complaint issued specifying the allegations against me;

B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;

C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

I understand that:

A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and

C. If accepted:

1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;

2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I may not take any position in any proceeding

brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

9/20/17
Date (mm/dd/yyyy)

Respondent, Murray Sinclaire

Reviewed by:

Kevin S. Woodard
Counsel for Respondent
Dinsmore & Shohl LLP
255 East Fifth Street
Suite 1900
Cincinnati, OH 45202
T (513) 977-8646

Accepted by FINRA:

9/25/17
Date

Signed on behalf of the
Director of ODA, by delegated authority

Miki Vucic Tesija, Senior Regional Counsel
FINRA Department of Enforcement
55 W. Monroe Street, Ste. 2700
Chicago, Illinois 60603
(312)899-4641
Miki.Tesija@finra.org

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016050811301

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Gates Capital Corporation, Respondent
Registered Broker-Dealer
CRD No. 29582

John C. Fitzgerald, Respondent
Former Registered Representative
CRD No. 1529631

James D. Casey, Respondent
Registered Principal
CRD No. 500062

Youngwhi Kim, Respondent
Registered Principal
CRD No. 1394474

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondents Gates Capital Corporation ("Gates Capital" or the "firm"), John C. Fitzgerald, James D. Casey, and Youngwhi Kim (collectively, the "Respondents") submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. Respondents hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Gates Capital has been a FINRA member firm since 1992. The firm is also a registrant of the Municipal Securities Rulemaking Board ("MSRB"). The firm is headquartered in New York, New York, and has three branch offices and approximately 19 registered representatives. The firm's primary business is the underwriting and secondary market trading of municipal securities. The firm also trades corporate equity and debt securities.

Fitzgerald entered the securities industry more than 40 years ago. As relevant here, Fitzgerald was registered as a municipal securities representative with Gates Capital from April 2013 to February 2018 and acted as underwriter and advisor for municipalities while registered with the firm. On February 16, 2018, Gates Capital filed a Form U5 terminating Fitzgerald's registrations with the firm.

Casey entered the securities industry more than 40 years ago. As relevant here, Casey has been registered in various capacities with Gates Capital since March 1992.

Kim entered the securities industry more than 25 years ago. As relevant here, Kim has been registered in various capacities with Gates Capital since March 1992.

RELEVANT DISCIPLINARY HISTORY

In November 2014, without admitting or denying the findings, Gates Capital settled a FINRA matter and consented to findings that it had untimely submitted information concerning variable-rate demand obligations ("VRDOs") to the MSRB, including the date and time when the interest rates for the VRDOs were reset, in violation of MSRB Rule G-34. In addition, the firm submitted inaccurate information to the MSRB regarding the time when the interest rate resets for VRDOs were determined and failed to maintain records regarding the interest rate reset times, in violation of MSRB Rules G-8 and G-34. Further, the firm's WSPs were not reasonably designed to ensure compliance with MSRB Rules, in violation of MSRB Rule G-27. Gates Capital was censured and fined $25,000.

In December 2004, without admitting or denying the findings, Gates Capital, Kim, and two other individual respondents settled a matter with FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and consented to findings that Gates Capital, acting through the individual respondents, (1) permitted an individual to engage in municipal securities activities without proper qualifications, and (2) failed to create a blotter reflecting 26 equity transactions effected at the firm in violation of MSRB Rules G-2 and G-3, NASD Rules 3110 and 2110, and SEC Rule 17a-3. The firm and the individual respondents were jointly and severally fined $12,500.

In August 1996, without admitting or denying the findings, Gates Capital and Kim settled a NASD matter and consented to findings that Gates Capital, acting through Kim, failed to file a Form G-37 in violation of MSRB Rule G-37. The firm and Kim were fined $1,000 jointly and severally.

Casey and Fitzgerald have no relevant disciplinary histories.

OVERVIEW

Between April 2013 and May 2015, Respondent Gates Capital failed to make timely disclosure of its role as underwriter in connection with certain municipal bond transactions. In one such transaction, Respondent Fitzgerald switched roles from financial advisor to underwriter, and both the firm and Fitzgerald's immediate supervisor, Respondent Casey, failed to reasonably supervise Fitzgerald.

During the same period, Fitzgerald also conducted his securities activities using an outside email account that was neither reviewed nor retained by Gates Capital, a practice known to both Casey and Respondent Kim, who was responsible for the firm's books and records and for reviewing Fitzgerald's emails. Gates Capital and Kim also did not maintain and preserve records relating to Fitzgerald's business expenses incurred in connection with his municipal securities activities, including expenses related to entertainment or other gratuities provided to employees or agents of municipal issuers. In addition, Fitzgerald allowed an unregistered family member to work on municipal securities transactions without supervision by any firm principal—a situation known to Casey—and without the firm determining whether the family member was an associated person of the firm or needed to be registered with the firm.

Finally, between December 2013 and July 2015, the firm facilitated at least 21 cross trades that suggested another broker-dealer might be engaged in interpositioning. The firm's then-current WSPs required principal review for such issues but did not reasonably state how the principal should conduct such reviews and the firm failed to reasonably review these cross trades. In addition, the firm's WSPs were deficient because they failed to adequately set forth the steps to be taken by the firm in conducting fair pricing reviews for municipal securities.

Based on this conduct, Respondent Gates Capital violated MSRB Rules G-8, G-9, G-17, and G-27; Respondent Fitzgerald willfully violated MSRB Rules G-17 and G-23; Respondent Casey violated MSRB Rule G-27; and Respondent Kim violated MSRB Rules G-8, G-9, and G-27.

FACTS AND VIOLATIVE CONDUCT

The City's 2014 Municipal Bond Offering

MSRB Rule G-23(d) prohibits municipal securities dealers that act as financial advisors on an issuance of municipal securities from: (i) acquiring as principal either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from the issuer all or any portion of such issue; or (ii) acting as agent for the issuer in arranging the placement of such issue. This AWC refers to both these activities as "underwritings" performed by "underwriters."

Rule G-23 is designed to minimize the prima facie conflict of interest that exists when a municipal securities professional acts as both a financial advisor and an underwriter with respect to the same issue.[1] The primary role of an underwriter is to purchase or arrange for the placement of securities in an arm's-length commercial transaction between the issuer and the underwriter.[2] In a financial advisory relationship, however, both the issuer and the financial advisor have a mutually beneficial interest in the issuance of securities.

MSRB Rule G-23(b) provides that, among other things, a financial advisory relationship is deemed to exist for purposes of Rule G-23 when a dealer renders financial advice to an issuer or enters into an agreement with an issuer to provide financial advisory services. "Advice" is construed broadly and "includes, without limitation, a 'recommendation' that is particularized to the specific needs, objectives, or circumstances of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues[.]"[3]

Although MSRB Rule G-23(c) requires a financial advisory relationship to be evidenced by a writing, a financial advisory relationship will be deemed to exist whenever a dealer renders the types of advice provided for in Rule G-23(b), regardless of the existence of a written agreement.[4] However, a dealer that clearly identifies itself in writing as an underwriter and not as a financial advisor from the earliest stages of its relationship with the issuer with respect to that issue will be

[1] MSRB Rule G-23 Interpretive Guidance, "Issuer consent: financial advisor participation in underwriting – April 10, 1984."

[2] MSRB Rule G-23 Interpretive Guidance, "Guidance on the Prohibition on Underwriting Issues of Municipal Securities for which a Financial Advisory Relationship Exists Under Rule G-23 – November 27, 2011."

[3] *See* Registration of Municipal Advisors, Exchange Act Release No. 34-70462 (September 20, 2013), 78 FR 67467, at 67479 (November 12, 2013).

[4] MSRB Rule G-23 Interpretive Guidance, "Guidance on the Prohibition on Underwriting Issues of Municipal Securities for which a Financial Advisory Relationship Exists Under Rule G-23 – November 27, 2011.

considered to be "acting as an underwriter" under Rule G-23(b) with respect to that issue.[5] Consistent with MSRB Rule G-17, the writing (commonly referred to as a "G-17 letter") must make clear that the relationship between the underwriter and issuer is an arm's-length commercial transaction and that the underwriter has financial and other interests that differ from those of the issuer.[6] The writing must also make clear that, unlike a municipal advisor, an underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the issuer with regard to its own financial or other interests.[7]

MSRB Rule G-27(a) and (b) requires firms, among other things, to establish and maintain a system to supervise the municipal securities activities of each registered representative and associated person of the firm that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable MSRB rules.

On January 9, 2014, Gates Capital underwrote a $2.185 million bond offering for a California municipality (the "city"). Fitzgerald through his firm, Fitzgerald Public Finance ("FPF"), a division of Gates Capital, was the lead banker for the offering, which was a refinancing of outstanding bonds that the city had previously issued in 2003. Fitzgerald had also been the lead banker on the 2003 issuance while he was registered at another broker-dealer.

In late March or early April 2013, the assistant city manager for the city contacted Fitzgerald and asked him to analyze the city's outstanding bonds and to advise the city regarding potential refinancing options that might generate immediate cash savings to be used to hire additional police officers for the city in the short term. In response, Fitzgerald identified three outstanding bonds for potential refinancing and proposed three VRDO refinancing options. One of the options Fitzgerald proposed was to refinance the city's 2003 offering. Fitzgerald estimated both the costs (including principal, interest, and other associated costs and fees) and the savings the city could expect to realize under each of the three proposals.

City managers then asked Fitzgerald to explore further the option of refinancing the 2003 issuance. In response, Fitzgerald prepared and presented two VRDO options for refinancing the 2003 issuance. He then met with the city managers in June 2013 to discuss the city's specific funding needs and the proposed refinancing options. After the discussion, the city manager selected one of Fitzgerald's proposed options and asked him to proceed with the refinancing in accordance with the goal of generating cash to hire additional police. Casey, who was Fitzgerald's supervisor, did not review the proposals or the associated cash

[5] *Id*.

[6] *Id*.

[7] MSRB Rule G-17 Interpretive Notice, "Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities – August 2, 2012."

flows, savings schedules, and interest-rate assumptions before Fitzgerald presented them to the city and, as a general matter, only sometimes reviewed such finance options and savings schedules before Fitzgerald proposed them to municipalities.

After the June 2013 meeting, Fitzgerald continued to provide the city with financial advice and services including: assembling a finance team; creating and distributing financing schedules; making a presentation about the refinance to the city council in August 2013; and advising the city regarding a letter of credit and the attributes of a VRDO refinancing. Minutes from the August city council meeting referred to Fitzgerald as "Financial Advisor" and noted that he "addressed the current debt refunding." Casey understood that the firm's and Fitzgerald's role in any particular issue could be specified either formally in an engagement letter or informally in the meeting minutes of a city council meeting but Casey did not review the meeting minutes for the August 2013 city council meeting.[8]

By letter dated August 14, 2013, the city engaged FPF to serve as a "financing team member" and "placement agent" in connection with the refinancing. The engagement was reflected in a letter that stated that FPF would "work closely with [the city manager], the City and bond Counsel to structure the proposed financing" and that "the full professional resources of FPF and Gates Capital Corporation will be available to assist … [the city manager] and the City in this matter." The letter was written on FPF letterhead which identified FPF as a "Financial Advisor or Underwriter to Local Governments." Additional documents from this approximate period created by the city and other financing team members refer to FPF and Gates Capital as "underwriter," but neither the August 14, 2013 letter nor the additional documents provided the information regarding the nature of the relationship between the city (as issuer) and FPF and Gates Capital (as underwriter), as required by MSRB Rule G-17.

In late September 2013, the city manager and the city's finance director contacted Fitzgerald to raise questions about using a VRDO structure. Thereafter, Fitzgerald emailed Casey and another banker at Gates Capital and explained that the city manager wanted Fitzgerald to provide arguments to help convince members of the city council and city residents to proceed with the VRDO transaction which Fitzgerald had recommended. The next day, Fitzgerald emailed the finance director and city manager and wrote that the VRDO he had proposed would generate present value savings and was "in the best interest of the City."

On December 18, 2013, Gates Capital sent its original G-17 letter to the city, stating that Gates Capital and Fitzgerald "intend[] to serve as underwriter and not as a financial advisor or municipal advisor" in connection with the refinancing.

[8] Although Casey was responsible for supervising any financial advisory work Fitzgerald did while he was registered with Gates, Casey was unaware that Fitzgerald acted as a municipal advisor to two California municipalities pursuant to written advisory agreements. Fitzgerald had no such agreement with the city.

The G-17 letter also provided additional disclosures concerning the arm's-length nature of the underwriter-issuer relationship, as required by MSRB Rule G-17. These disclosures included notice that, "[u]nlike a municipal advisor, the Underwriter does not have a fiduciary duty to the [city] under the federal securities laws and, therefore, is not required to act in the best interest of the [city] without regard to its own financial or other interests." On January 8, 2014, only 21 days after the provision of the G-17 letter to the city, the bond refinancing closed.

Consistent with the requirements of MSRB Rules G-23 and G-17, Gates Capital's WSPs required that it make Rule G-17 disclosures in "the earliest stages of the underwriter's relationship with the issuer with respect to an issue" to provide the issuer with "clarity throughout all substantive stages of a financing regarding the roles of its professionals; (2) [awareness] of conflicts of interest promptly after they arise and well before the issuer effectively becomes fully committed (either formally or due to having already expended substantial time and effort) to completing the transaction with the underwriter; and (3) [] information required to be disclosed with sufficient time to take such information into consideration before making certain key decisions on the financing."

In addition to the circumstances concerning the city's 2014 issuance described above, on eight other occasions between 2013 and 2015, Gates Capital served as an underwriter in unrelated municipal bond offerings in which it did not timely provide the issuers with a G-17 letter. In those instances, the G-17 letters were provided between two and 15 days prior to the closing date.

Starting in late March or early April 2013, Fitzgerald provided detailed financial advice to the city and made recommendations with respect to the structure, timing, terms, and other matters of the various VRDO refinance options he had proposed. Fitzgerald's advice and recommendations were individually tailored for and applicable only to the city. Fitzgerald provided financial advice for months—including advising the city manager and finance director that the VRDO refinance Fitzgerald recommended was "in the best interest of the City"—before the city received the required disclosures regarding the underwriter-issuer relationship in December 2013. Casey did not review the refinance proposals or associated cash flows, savings schedules, and interest-rate assumptions before Fitzgerald presented them to the city. Casey did not review the city council minutes even though he believed such minutes could constitute the engagement agreement and specify Fitzgerald and Gates Capital's role in the refinance. As a result, Fitzgerald willfully violated MSRB Rule G-23 and Gates Capital and Casey failed to reasonably supervise Fitzgerald's municipal securities activities in violation of MSRB Rule G-27.

With respect to the city's 2014 bond issue and eight other issues, Gates Capital also failed to provide G-17 disclosures in the earliest stage of the relationship as

required by MSRB rules and the firm's WSPs. As a result of the foregoing conduct, the firm violated MSRB Rules G-17 and G-27.

Fitzgerald's Use of an Outside Email Account

MSRB Rule G-17 requires that, "[i]n the conduct of its municipal securities or municipal advisory activities, each 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."

MSRB Rule G-27(e) requires a firm principal to review the correspondence, including email, of its municipal securities representatives with the public relating to the municipal securities activities of the firm. MSRB Rule G-9(b)(viii)(C) requires that municipal securities dealers maintain all written and email communications relating to the conduct of its municipal securities business.

Consistent with these regulatory requirements, at all times relevant to this AWC the firm's WSPs required its registered representatives to conduct their business-related email correspondence through a firm-issued email address so that those communications could be subjected to supervisory review and retained by the firm. According to the firm's procedures, Kim was responsible for ensuring compliance with these provisions.

From April 2013 through April 2016 (the "email review period"), Fitzgerald used an outside email account, which was not hosted or captured by the firm's email servers, to conduct his municipal securities business. Casey and Kim were both aware of Fitzgerald's use of the outside email, and repeatedly instructed him to use his Gates Capital email to conduct his municipal securities business so that his communications could be reviewed and retained in accordance with firm policy and regulatory requirements. However, Fitzgerald continued to use his outside email address, and Casey and Kim did not sufficiently respond to evidence that he was doing so or otherwise sufficiently address this ongoing violation of firm policy. For example, Fitzgerald listed his outside email address as his contact information on finance team distribution lists, including the distribution list for the city's 2014 refinance. Casey, and to a lesser extent Kim, also received numerous emails throughout the email review period on which Fitzgerald's outside email address was listed.

As a consequence, Fitzgerald's business-related email communications for the email review period were neither reviewed nor retained by the firm. Additionally, all of Fitzgerald's email pre-dating January 8, 2015 was at some point deleted from his outside email account. The firm, Casey, and Kim were unaware of this deletion until FINRA staff requested Fitzgerald's emails in connection with its investigation of the city's 2014 refinance.

As a result of the foregoing conduct, Fitzgerald willfully violated MSRB Rule G-17; Gates Capital, Kim, and Casey violated MSRB Rule G-27; and Gates Capital and Kim violated MSRB Rules G-8 and G-9.

Fitzgerald's Son Assisted Fitzgerald with Municipal Securities Activities

The Exchange Act and other relevant rules and regulations impose registration and qualification requirements on individuals based on their securities-related activities. Subject to certain exceptions, individuals who work for a registered broker-dealer or municipal advisor are "associated persons" who must be properly supervised by the registered entity. This is the case whether such individuals are employees or independent contractors. Although associated persons usually do not have to register separately with the SEC, they may have to register with the self-regulatory organizations of which their employer is a member.

Fitzgerald engaged his son to assist in modeling cash flow and deal sizing analyses in certain municipal offerings for which Fitzgerald served as an investment banker, including the city's 2014 bond issuance. Fitzgerald used the analyses prepared by his son when making proposals to issuers, including in the VRDO proposals he provided to the city. However, Fitzgerald's son was not registered with Gates Capital (or any FINRA member firm), nor was he a formal employee or contractor of the firm. As such, his work in connection with Fitzgerald's municipal securities business was not supervised by Casey or any other firm principal.

Casey was aware that Fitzgerald's son had assisted Fitzgerald with such modeling prior to Fitzgerald joining the firm, and Casey was copied on emails relating to cash flow analyses for the city's 2014 refinance based on assumptions provided by Fitzgerald and his son. Furthermore, Fitzgerald's son was identified as the Vice President of FPF and a member of the finance team on the distribution list for the city's 2014 refinance, which Casey received. Neither Casey nor any other firm principal investigated the scope of the son's securities-related activities to determine whether the son was an associated person of Gates Capital who needed to be supervised by a firm principal or whether Fitzgerald's son should be registered to perform those activities. As a result of the foregoing, Gates Capital and Casey violated MSRB Rule G-27.

Fitzgerald's Municipal Securities Business-Related Expenses

From time to time, Fitzgerald incurred business expenses related to his municipal securities activities, including the provision of entertainment or other gratuities to employees or agents of municipal issuers to whom he provided service or sought to provide service. Neither Casey nor the firm required Fitzgerald to provide the firm with records relating to the expenses he incurred in connection with his business activities on behalf of the firm. Consequently, Fitzgerald's business expenses were wholly unsupervised. For example, in July 2013, while advising

the city regarding the bond refinance, Fitzgerald provided a personal check to the law firm which acted as the city's attorney in the 2014 bond issuance to reimburse the law firm for Fitzgerald's portion of a dinner at a trade association conference that Fitzgerald and the law firm had co-sponsored. Neither Casey nor any other firm principal was aware of Fitzgerald's payment to the city's attorney. On other occasions, Fitzgerald provided gifts in the form of meals for city officials. Casey and the firm were generally unaware of Fitzgerald's expenditures in connection with these meals and the firm neither reviewed nor kept any related records.

MSRB Rule G-20 protects against improprieties and conflicts of interest that may arise when regulated entities or their associated persons give gifts or gratuities in relation to the municipal securities activities of the recipients' employers. MSRB Rule G-20(g) prohibits brokers, dealers, and municipal securities dealers and their associated persons from, among other things, making direct or indirect payments of any non-cash compensation with certain exceptions. Rule G-20(b)(ii) provides one such exception and permits occasional gifts of meals and entertainment within normal business dealings. MSRB G-8(a)(xvii) requires firms to maintain records of all non-cash compensation referred to in MSRB Rule G-20(g). MSRB Rule G-9(a)(ix) requires firms preserve the records required to be maintained by Rule G-8(a)(xvii). MSRB Rule G-9(b)(viii) requires firms to preserve, among other records, check books, bank statements, cancelled checks, and cash reconciliations relating to its business. Kim was responsible for the firm's compliance with the books and records provisions and Casey was responsible for supervising Fitzgerald's compliance.

Gates Capital and Kim did not maintain and preserve records relating to Fitzgerald's payments or gifts related to his municipal securities activities. The firm and Casey failed to reasonably supervise the payments and gifts Fitzgerald made relating to his municipal securities activities. As a result of the foregoing conduct, Gates Capital, Casey, and Kim violated MSRB Rule G-27; and Gates Capital and Kim violated MSRB Rules G-8 and G-9.

Cross Trades of Municipal Securities in the Secondary Market

In addition to the supervisory system requirements of MSRB Rule G-27(a) and (b) noted above, MSRB Rule G-27(c) requires firms to adopt, maintain, and enforce WSPs reasonably designed to ensure that the conduct of the municipal securities activities of the firm and its associated persons are in compliance with applicable securities laws, regulations, and rules. The WSPs must codify the firm's supervisory system and, at a minimum, establish procedures that state how a designated principal shall monitor the firm's and its associated persons' municipal securities activities.

From December 2013 through July 2015, the firm facilitated at least 21 cross trades in municipal securities for customers of another broker-dealer which presented indications that the other broker-dealer may have been engaged in

interpositioning. During that period, the firm's WSPs required a firm principal to review municipal securities transactions for potential manipulation; however, the firm's WSPs did not reasonably specify how or when such reviews were to be conducted, and the firm failed to reasonably conduct the required supervisory reviews for these 21 cross trades. In addition, the firm's WSPs were deficient because they failed to adequately set forth the steps to be taken by the firm in conducting fair pricing reviews for municipal securities.[9] As a result of the foregoing conduct, Gates Capital violated MSRB Rule G-27.

B. The Respondents also consent to the imposition of the following sanctions:

- Gates Capital – Censure, $125,000 fine, and an undertaking to hire an independent consultant, as described below;
- Fitzgerald – Suspension in all-capacities for 18-months and $10,000 fine;
- Casey – Suspension in all principal capacities for six-months and $5,000 fine;
- Kim – Suspension in in all principal capacities with the exception of any activities requiring a Series 27 license for four-months and $5,000 fine.

Respondents Gates Capital, Casey, and Kim each agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. They have each submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

Respondent Fitzgerald's fine shall be due and payable either immediately upon his reassociation with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

The Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Respondent Fitzgerald understands that if he is barred or suspended from associating with any FINRA member, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, he may not be associated with any FINRA member in any capacity,

[9] These WSP deficiencies were discovered in connection with a review conducted by FINRA's Department of Market Regulation fixed income group of 18 cross trades in municipal securities executed by the firm between October 2011 and April 2013.

including clerical or ministerial functions, during the period of the bar or suspension (*see* FINRA Rules 8310 and 8311).

Respondents Casey and Kim each understand that if he is barred or suspended from associating with any FINRA member in a principal capacity, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, Respondent Casey may not be associated with any FINRA member in a principal capacity during the period of his suspension and Respondent Kim may not be associated with any FINRA member in a principal capacity with the exception of any activities requiring a Series 27 license during the period of his suspension (*see* FINRA Rules 8310 and 8311). Furthermore, because he is subject to a statutory disqualification during the suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

Respondent Fitzgerald understands that this settlement includes a finding that he willfully violated MSRB Rules G-17 and G-23 and that under Article III, Section 4 of FINRA's By-Laws, this makes him subject to a statutory disqualification with respect to association with a member.

Respondents Casey and Kim understand that this settlement includes a finding that they failed to supervise an individual who violated MSRB Rules G-17 and G-23 and that under Article III, Section 4 of FINRA's By-Laws, this makes them subject to a statutory disqualification with respect to association with a member.

Respondent Gates Capital understands that this settlement includes a finding that it failed to supervise an individual who violated MSRB Rules G-17 and G-23 and that under Article III, Section 4 of FINRA's By-Laws, this makes the firm subject to a statutory disqualification with respect to membership.

Respondent Gates Capital shall:

a. Retain, within 60 days of the date of the Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the firm's policies, systems, and procedures related to the findings of rule violations described above.

b. The Independent Consultant, any firm with which the Independent Consultant is affiliated or of which he or she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties, shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, any of the Respondents during the two years prior to the date of the Notice of Acceptance of this AWC.

c. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.

d. Cooperate with the Independent Consultant in all respects, including by providing staff support. Gates Capital shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Gates Capital shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; Gates Capital shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA.

e. Require the Independent Consultant, at the conclusion of the review, which shall be no more than 120 days after the date of the Notice of Acceptance of this AWC, to submit to the firm and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of the firm's policies, systems, procedures, and training relating to the findings of rule violations described above; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the firm's policies, systems, procedures and training.

f. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with Gates Capital, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated or of which he or she is a member, and any person engaged to assist the Independent Consultant in performing his or her duties pursuant to this AWC, shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Gates Capital or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

g. Within 60 days after delivery of the Written Report, Gates Capital shall adopt and implement the recommendations of the Independent Consultant

or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the firm with a written decision reflecting his or her determination. The firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

h. Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), Gates Capital shall provide FINRA staff with a written implementation report, certified by an officer of Gates Capital, attesting to, containing documentation of, and setting forth the details of the firm's implementation of the Independent Consultant's recommendations.

i. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

The sanctions imposed herein shall be effective on dates set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

A. To have a Complaint issued specifying the allegations against them;

B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;

C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondents specifically and voluntarily waive any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondents understand that:

A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondents; and

C. If accepted:

1. this AWC will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by FINRA or any other regulator against Respondents;

2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. Respondents may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondents may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned Respondents and individual authorized to act on the firm's behalf certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that all Respondents have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondents to submit it.

4/24/2018
Date (mm/dd/yyyy)

THOMAS C. SULGER - CEO
Gates Capital Corporation

By: TCS

4/18/2018
Date (mm/dd/yyyy)

John C. Fitzgerald

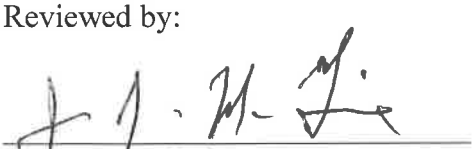
4-18-2018
Date (mm/dd/yyyy)

James D. Casey

4/17/18
Date (mm/dd/yyyy)

Youngwhi Kim

Reviewed by:



James J. McGuire, Esq.
Kevin S. Koplin, Esq.
Counsel for Respondents
Barton LLP
Graybar Building, 18th Floor
420 Lexington Avenue
New York, New York 10170
(212) 687-6262

Accepted by FINRA:

May 4, 2018
Date

Signed on behalf of the
Director of ODA, by delegated authority

Daniel L. Gardner
Senior Counsel
FINRA Department of Enforcement
15200 Omega Drive, Third Floor
Rockville, Maryland 20850
(301) 258-8500

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016048911301

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Mehran Tazhibi, Respondent
Former General Securities Representative
CRD No. 5416037

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Mehran Tazhibi submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. I hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Tazhibi first became registered with FINRA as a General Securities Representative ("GSR") through a member firm in October 2007. From June 2010 through September 2013, he was registered with FINRA as a GSR through Citigroup Global Markets Inc. ("CGMI"). From September 2013 until July 2017, Tazhibi was registered with FINRA as a GSR through consecutive associations with two different member firms. Tazhibi is not currently registered or associated with a member firm but is subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws. Tazhibi has no disciplinary history.

OVERVIEW

In July 2013, Tazhibi made an unsuitable recommendation to two retail customers that they invest in a non-investment grade municipal bond intended by the issuer only for sale to institutional buyers. By doing so, Tazhibi violated MSRB Rules G-19 and G-17.

FACTS AND VIOLATIVE CONDUCT

MSRB Rule G-19 requires brokers "to have a reasonable basis to believe that a recommended transaction or investment strategy involving a municipal security or municipal securities is suitable for the customer." The rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct. MSRB Rule G-17 requires brokers in municipal securities to "deal fairly" with their customers and prohibits "any ... unfair practice."

In July 2013, Tazhibi recommended to customers DS and JS, a married couple, that they invest approximately $135,000 in a California Statewide Communities Development Authority Revenue Bond (the "Bond"). The Offering Memorandum for the Bond provided that the Development Authority would loan the bond offering proceeds to the Thomas Jefferson School of Law to finance the acquisition, construction and improvements of a multi-story building for the new law school campus in San Diego, California. The Bond was to mature in October 2032 and was to pay interest at an annual rate of 7.25%.[1]

The Offering Memorandum also stated that the Bond "involve[s] risks that may not be appropriate for certain investors" and "will be sold only to purchasers who are Approved Institutional Buyers" and extended this restriction to sales in secondary market transactions. Approved Institutional Buyers included insurance companies, registered investment companies, employee benefit plans, and small business companies that own and invest on a discretionary basis at least $100 million in securities of issuers that are not affiliated with the entity. By July 2013, the Standard & Poor's Rating Service had downgraded the Bond to a non-investment grade, speculative credit rating of BB.

Tazhibi did not have a reasonable basis to believe that the non-investment grade, speculative-rated Bond was suitable for DS and JS. When he recommended the Bond to them in July 2013, DS and JS had just started retirement, and had an investment profile that included an investment objective of income and growth and a conservative risk tolerance. In addition, although the Bond was intended only for sale to Approved Institutional Buyers, DS and JS were individual retail customers and did not qualify as Approved Institutional Buyers. Tazhibi's recommendation that DS and JS invest in the Bond was inconsistent with their financial situation and objectives and the intended market for the Bond.

In light of these factors, Tazhibi lacked a reasonable basis to recommend the Bond to DS and JS and failed to deal fairly with them. By virtue of the foregoing, Tazhibi violated MSRB Rules G-19 and G-17.

[1] The Bond was cancelled in October 2014, based on a restructuring agreement with the bondholders. CGMI paid restitution to customers DS and JS to compensate them for their losses.

B. I also consent to the imposition of the following sanctions:

1. A two-month suspension from association with any FINRA member firm in any capacity; and

2. A $10,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

A. To have a Complaint issued specifying the allegations against me;

B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;

C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's

participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

I understand that:

A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and

C. If accepted:

1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;

2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I understand and acknowledge that FINRA does not represent or advise me and I cannot rely on FINRA or FINRA staff members for legal advice; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

8/13/2017
Date (mm/dd/yyyy)

Mehran Tazhibi, Respondent

Reviewed by:

Peter R. Boutin
Counsel for Respondent
Keesal, Young & Logan
450 Pacific Avenue
San Francisco, CA 94133
Tel: 415.398.6000
peter.boutin@kyl.com

Accepted by FINRA:

09/13/2017
Date

Signed on behalf of the
Director of ODA, by delegated authority

Jill L. Jablonow
Senior Regional Counsel
FINRA Department of Enforcement
300 South Grand, Suite 1600
Los Angeles, California 90071-3126
Phone Number (213) 613-2659
E-Fax Number (202) 721-6517
jill.jablonow@finra.org