

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88784 / April 30, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5492 / April 30, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19779

In the Matter of

JERRY E. ORELLANA,

Respondent.

**CORRECTED ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND
15B(c) OF THE SECURITIES EXCHANGE
ACT OF 1934 AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 15B(c) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Jerry E. Orellana (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Sections 15(b) and 15B(c) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This matter involves improper conduct by Jerry E. Orellana ("Orellana"), a former Executive Director with UBS Financial Services Inc. ("UBS"). Between April 2015 and June 2016, Orellana worked on UBS's syndicate desk and was responsible for submitting orders he received from UBS registered representatives on behalf of UBS customers to members of the underwriting syndicate in offerings of new issue municipal bonds. During the relevant period, Orellana submitted hundreds of retail orders for bonds on behalf of certain UBS customers when he should have known that some of the orders were not *bona fide* retail orders. The UBS customers were individuals and entities who were engaged in the business of buying and immediately reselling or "flipping" new issue bonds. Therefore, they were ineligible to place retail orders.

2. As a result of the conduct described herein, Orellana violated Rules G-11(k) and G-17 of the Municipal Securities Rulemaking Board ("MSRB").

Respondent

3. **Jerry E. Orellana**, age 42, resides in Paramus, New Jersey. From 2013 to May 2019, he served as an Executive Director and Municipal Bond Trader at UBS. From April 2015 to June 2016, Orellana also worked on the UBS syndicate desk on new issue municipal bond offerings distributed by UBS. During the relevant period, Orellana held Series 7, 53, and 63 licenses.

Related Entity

4. **UBS Financial Services Inc.** ("UBS"), incorporated in Delaware and headquartered in Weehawken, New Jersey, is registered with the Commission as a broker-dealer and investment adviser. It is a subsidiary of UBS AG.

Background on Negotiated Offerings of Municipal Bonds

5. Municipalities often raise money by issuing bonds that are sold to the public through an underwriting process. In what is known as a "negotiated" offering, the municipal issuer chooses a broker-dealer to act either as the sole underwriter or as the senior manager of an underwriting syndicate. An underwriting syndicate is a group of broker-dealers that join together

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

to purchase new issue bonds from the issuer and distribute those bonds to the public. In addition, certain broker-dealers distribute new issue bonds pursuant to distribution agreements with members of the underwriting syndicate.

6. Bonds in negotiated offerings are offered for sale during designated “order periods,” which are windows of time during which the underwriters solicit orders from potential investors. Underwriters market offerings by distributing electronic “pricing wires” to their own customers as well as to other broker-dealers, who may be interested in purchasing bonds for their inventory. The pricing wires describe the bonds being offered as well as applicable rules for the offering, including the “priority of orders,” which establishes the sequence in which bonds will be allocated to specific order types. The priority of orders is important to potential purchasers because orders for bonds in a primary offering often exceed the amount of bonds available. Typically, orders from individual retail investors have the highest priority. Issuers prioritize retail orders to maximize the volume of bonds placed with individuals who will buy and hold the bonds rather than quickly re-trade their bonds. Retail investors may also reside in the issuer’s jurisdiction and therefore benefit from state- or locality-specific tax advantages. Issuers often require the submission of zip codes with retail orders as a way to verify that the customer is a resident of the issuer’s jurisdiction.

7. An issuer may specify separate order periods for different categories of customers, typically by holding an initial retail order period for retail customers and a subsequent institutional order period for institutional customers. Often there is only one order period, with priority given to retail orders during that period. Pricing wires typically contain issuer-approved rules stating who is eligible to participate in the retail order period or to receive retail order priority. Pricing wires also commonly state that “stock orders are not permitted to be entered during the retail order period.” “Stock orders” refer to orders from broker-dealers attempting to purchase bonds for their own inventory. Stock orders are permitted during subsequent institutional order periods, but issuer priority rules generally require underwriters to give stock orders lower priority than retail or institutional customer orders. Because stock orders generally have lower priority than customer orders, orders from broker-dealers (or traders acting on their behalf) often go unfilled.

8. During the relevant period, UBS did not participate in new issue municipal bond offerings as an underwriter or a member of an underwriting syndicate, but was able to obtain new issue bonds by entering into distribution agreements with other broker-dealers who did serve as members of the underwriting syndicate. UBS’s “syndicate desk” handled orders for new issue municipal bonds that UBS obtained under these distribution agreements. The distribution agreement in effect during the relevant period required UBS to offer and sell securities in compliance with certain offering restrictions, and to confirm that each order on behalf of a retail customer was a *bona fide* retail order (*i.e.*, an order that met the requirements for “retail” as defined by the issuer).

Orellana Submitted Improper Retail Orders in Primary Offerings of Municipal Bonds

9. During the relevant period, Orellana worked on the UBS syndicate desk. He was responsible for accepting orders for new issue municipal bonds from UBS registered representatives on behalf of their customers, and submitting those orders to members of the underwriting syndicate in offerings distributed by UBS. At times, Orellana was also responsible for communicating with registered representatives to confirm the eligibility of retail orders they submitted on behalf of UBS customers when UBS was asked to do so by members of the underwriting syndicate. UBS's policies and procedures required that, if an issuer designated a retail order period, the syndicate desk would only accept orders for retail customers during that period, unless the desk provided deal-specific instructions that allowed other orders to be accepted.

10. During the relevant period, Orellana submitted retail orders for new issue municipal bonds to the underwriting syndicate through an electronic order-entry system. Some of these orders were submitted by UBS registered representatives on behalf of certain UBS customers who were engaged in the business of buying and immediately reselling, or "flipping," new issue bonds. These customers were known in the industry as "flippers." As a result, UBS's flipper customers obtained bonds on a retail priority basis. However, the orders Orellana submitted to the underwriting syndicate on behalf of UBS's flipper customers did not actually qualify for retail priority, and therefore were not *bona fide* retail orders as defined by the issuer.

11. During his time on the UBS syndicate desk, Orellana understood that flippers generally did not qualify for retail priority. For example, the flipper customers that received retail allotments held delivery-versus-payment accounts at UBS that contained no assets, which Orellana generally understood was an indication that the accountholders were unlikely to be *bona fide* retail customers. Certain UBS registered representatives who submitted orders on behalf of flippers often represented to Orellana that the orders were *bona fide* retail orders, and either concealed or did not disclose the fact that their customers were flippers. Nevertheless, Orellana understood that the flipper customer of a UBS registered representative whose orders were submitted for retail priority was in the business of buying and immediately reselling bonds, because Orellana had occasionally traded with that customer in 2012 and 2014 when Orellana was a UBS bond trader. Orellana also had reason to know that, prior to his time on the UBS syndicate desk, another UBS registered representative had submitted at least one retail order on behalf of his flipper customer. As a result, Orellana should have known that some of the orders he received from these UBS registered representatives did not qualify for retail priority.

12. On a few occasions, UBS registered representatives submitted their flipper customers' retail orders to the UBS syndicate desk without the required zip code. On those occasions, Orellana sometimes generated a zip code not associated with the customer's account and submitted it with the customer's retail order to the underwriting syndicate. By submitting

inaccurate zip codes, Orellana created the misimpression that the flipper customers were legitimate retail customers within a specific jurisdiction whose orders were entitled to the highest priority.

Violations

Orellana Violated MSRB Rule G-17

13. MSRB Rule G-17 provides in relevant part that, in the conduct of its municipal securities business, every broker-dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.² Negligence is sufficient to establish a violation of MSRB Rule G-17.

14. Orellana willfully³ violated MSRB Rule G-17 by (a) submitting orders to members of the underwriting syndicate as eligible retail orders, when he should have known those orders did not qualify for retail priority, and (b) supplying inaccurate zip codes with some of those orders.

Orellana Violated MSRB Rule G-11(k)

15. MSRB Rule G-11(k) provides that each broker, dealer, or municipal securities dealer that submits an order during a retail order period to the senior syndicate manager or sole underwriter, as applicable, shall provide in writing the following information relating to each order designated as retail submitted during a retail order period: (i) whether the order is from a customer that meets the issuer's eligibility criteria for participation in the retail order period; (ii) whether the order is one for which a customer is already conditionally committed; (iii) whether the broker, dealer, or municipal securities dealer has received more than one order from such retail customer for a security for which the same CUSIP number has been assigned; (iv) any identifying information required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with such retail order (but not including customer names or social security numbers); and (v) the par amount of the order.

² Subject to certain exceptions not relevant here, MSRB Rule D-11 includes "associated persons" within the definitions of brokers, dealers, and municipal securities dealers for purposes of all other MSRB rules.

³ "Willfully," for purposes of imposing relief under Sections 15(b) and 15B of the Exchange Act and Section 203(f) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

16. When submitting orders for new issue municipal bonds on behalf of flipper customers, Orellana in some instances failed to provide accurate information as to whether the order was from a customer that met the issuer's eligibility criteria for participation in the retail order period. In addition, by submitting inaccurate zip codes, Orellana provided inaccurate identifying information required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with some of those retail orders. As a result, Orellana willfully violated MSRB Rule G-11(k).

IV.

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

Accordingly, it is hereby ORDERED pursuant to Sections 15(b)(6) and 15B(c)(4) of the Exchange Act and Section 203(f) of the Advisers Act, that:

A. Respondent Orellana be, and hereby is:

suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

suspended from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock,

for a period of six months, effective immediately upon the entry of this Order.

B. Respondent Orellana shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission, of which \$12,500 shall be transferred to the Municipal Securities Rulemaking Board in accordance with Section 15B(c)(9)(A) of the Exchange Act, and of which the remaining \$12,500 shall be transferred to the general fund of the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

C. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Orellana as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Ivonia K. Slade, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

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

V.

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

issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary