

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10204 / September 9, 2016**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 78794 / September 9, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17533**

<p><b>In the Matter of</b></p> <p style="text-align:center"><b>BOKF, NA,</b></p> <p><b>Respondent.</b></p>
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**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against BOKF, NA (“BOKF” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

These proceedings arise out of the assistance provided by BOKF to Christopher Brogdon ("Brogdon") in connection with a series of fraudulent bond offerings through which Brogdon raised millions of dollars from investors to build, purchase, and renovate nursing homes, assisted living facilities, and retirement communities throughout the Southeastern and Midwestern United States. As indenture trustee and dissemination agent for the majority of Brogdon's bond offerings since 2000 (the "Brogdon Bond Offerings"), BOKF, primarily through its former senior vice president, Marrien Neilson ("Neilson"), allowed Brogdon to perpetuate this fraud while failing to perform its disclosure and notice obligations to bondholders.

In connection with these offerings, Brogdon routinely drew down on the debt service reserve funds ("DSRFs") held at BOKF to make debt service payments to investors, without replenishing the funds as required by the offerings' trust indentures and without making required disclosures on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") website. Brogdon also routinely failed to file on EMMA, or provide to BOKF for filing, required annual financial statements for the offerings. By virtue of this and other conduct, Brogdon made material misrepresentations to investors about his prior compliance with municipal securities continuing disclosure requirements in subsequent offerings, and engaged in a scheme to defraud investors in subsequent offerings regarding the financial viability of his prior projects.<sup>2</sup>

Though Neilson and others in BOKF's Corporate Trust Department (the "Department") knew BOKF was required to make disclosures and notifications to bondholders regarding Brogdon's failures to replenish DSRFs and to file annual financial statements for the Brogdon Bond Offerings, BOKF's practice—directed by Neilson—was not to do so. Neilson knew, and told others in the Department, that such disclosures and notifications could impair the closings of future offerings, raise red flags with bondholders, and cause regulatory problems for Brogdon's underwriters. Instead of making these required disclosures and notifications, Neilson facilitated BOKF's continued work as trustee for new offerings involving Brogdon and his facilities. As a result, BOKF caused Brogdon's primary antifraud violations by ignoring its own contractual disclosure and notification obligations regarding these issues.

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<sup>1</sup> 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.

<sup>2</sup> The Commission previously filed an action against Brogdon in the United States District Court for the District of New Jersey concerning this and other conduct. *See SEC v. Christopher Freeman Brogdon, et al.*, 15 Civ. 8173 (KM) (D.N.J.) (filed Nov. 20, 2015). On December 28, 2015, the Court entered judgment against Brogdon as part of a bifurcated settlement.

## Respondent

1. **BOKF**, doing business as Bank of Oklahoma, N.A., is a national banking association established in 1910 with its principal place of business in Tulsa, Oklahoma. BOKF is a registered municipal securities dealer and was a registered municipal advisor until September 2015. BOKF operates seven banking divisions in the Southwestern and Midwestern United States. As of December 31, 2015, BOKF held approximately \$31.5 billion in assets and \$21 billion in deposits. Since 2000, BOKF has served as indenture trustee for 39 Brogdon Bond Offerings, and as dissemination agent for 33 of these offerings.

## Other Relevant Individuals

2. **Brogdon**, age 67, resides in Atlanta, Georgia. He has been in the nursing home, assisted living, and retirement community business for more than 25 years. In 1986, Brogdon was censured, fined, and barred from association by the National Association of Securities Dealers after he was found to have effected transactions in securities while failing to maintain adequate net capital and, while in net capital deficiency, withdrawing cash and securities investments from the broker-dealer's accounts. Prior to 1986, Brogdon held Series 1, 24, and 53 licenses.

3. **Neilson**, age 66, resides in Isla Mujeres, Mexico. She worked at BOKF from September 1996 until July 9, 2015, when she was terminated. Neilson served as the regional manager of the Tulsa office of the Department ("Tulsa Corporate Trust") from approximately 2000 until January 2013. In 2007, she became a senior vice president. From January 2013 until July 9, 2015, she served as the national sales manager in the Department.

## Background

### I. The Brogdon Bond Offerings

4. For over 25 years, Brogdon had been in the business of building, purchasing, renovating, leasing, managing, and selling nursing homes, assisted living facilities, and retirement housing ("Facilities") in the Southeastern and Midwestern United States. Brogdon financed these projects, in part, through conduit municipal bond offerings. In a conduit municipal bond offering, a municipal authority technically serves as the issuer but issues the bonds on behalf of a "conduit" borrower such as a college, hospital, or nursing home. The conduit borrower then agrees to make payments to bondholders from the revenues generated by the underlying facility.

5. In the typical Brogdon Bond Offering, which was unrated, the proceeds from the sale of the bonds were used to undertake a particular project—the construction, acquisition, or renovation of a Facility—for the benefit of a Brogdon-controlled borrower. The Brogdon-controlled borrower, not the issuer, was obligated to make debt service payments to bondholders. To do so, the Brogdon-controlled borrower pledged the Facility and its revenues as security. Certain Brogdon Bond Offerings also included a personal guarantee from Brogdon, his wife, or a family limited liability company.

6. Since 2000, BOKF has served as indenture trustee for 39 Brogdon Bond Offerings, through which Brogdon raised more than \$164 million. Seventeen of these offerings were issued between 2007 and 2015 (the “Relevant Period”). Fourteen of these offerings remain outstanding, with a remaining principal amount of more than \$65 million.

7. In exchange for its work on the Brogdon Bond Offerings, BOKF was paid more than \$1.4 million in fees during the Relevant Period.

## **II. BOKF Was Required to Act in the Best Interest of Bondholders in the Brogdon Bond Offerings**

### **A. BOKF’s Duties as Indenture Trustee**

8. The trust indentures for the Brogdon Bond Offerings typically mandate the creation of a DSRF of a specified amount, to be funded with the proceeds of the offering and to be maintained in an account by BOKF. BOKF was permitted to invest DSRF funds in certain low-risk investments, but was only permitted to use the funds to pay principal and interest on the bonds to the extent funds were not otherwise available to make a required payment.

9. If the DSRF was drawn down, the trust indentures typically required the Brogdon-controlled borrower to replenish the amount drawn down within 12 months, through 12 equal monthly payments of 1/12 of the withdrawal. A failure to replenish the DSRF in this manner constituted an “event of default” under the trust indenture.

10. Upon the occurrence of an event of default under the trust indenture, BOKF was required to act in the best interest of the bondholders. BOKF had “the power to proceed with any right or remedy granted by the Constitution and laws of the State, as it may deem best in its sole discretion, including any suit, action or special proceeding in equity or at law for the specific performance of any agreement contained herein or for the enforcement of any proper legal or equitable remedy as the Trustee shall deem most effectual to protect the rights aforesaid.”

11. The trust indentures for the Brogdon Bond Offerings also specify the rights of the bondholders upon the occurrence of an event of default. Upon the request of 51% of bondholders holding at least 35% of the principal amount of bonds outstanding, and in response to a poll by BOKF of all bondholders, BOKF is required to accelerate the maturity date for payment of principal and interest and to declare all remaining principal due and payable immediately. Such bondholders may also request that BOKF exercise its legal rights under the trust indenture, such as its right to bring suit to enforce the terms of the trust indenture.

12. Accordingly, bondholders may not exercise their rights to accelerate payments or to require BOKF to take legal action against the Brogdon-controlled borrower unless they are polled (and thus notified) by BOKF of the occurrence of an event of default under the trust indenture.

13. During the Relevant Period, Neilson and other members of Tulsa Corporate Trust interpreted the trust indentures for the Brogdon Bond Offerings to require disclosure and notification to bondholders by BOKF of a failure to replenish (as opposed to a draw on) the DSRF.

### **B. BOKF's Duties as Dissemination Agent**

14. In addition to serving as indenture trustee, BOKF also served as dissemination agent for at least 33 Brogdon Bond Offerings, including 14 offerings during the Relevant Period. BOKF was named as dissemination agent in the continuing disclosure agreement ("CDA"), through which BOKF assumed additional responsibilities to bondholders.

15. The CDA is an agreement between BOKF and the Brogdon-controlled borrower for the benefit of the bondholders. The purpose of the CDA is to assist the underwriter in complying with its obligation under Exchange Act Rule 15c2-12 not to purchase or sell municipal securities in connection with an offering unless the underwriter has reasonably determined that an issuer of municipal securities or an obligated person for whom financial or operating data is presented in the final official statement has undertaken in a written agreement or contract for the benefit of the holders of such securities to provide continuing disclosure information regarding the security and the issuer or obligated person for the life of the municipal security.

16. The CDAs require BOKF to file certain documents on EMMA<sup>3</sup> to the extent the documents are provided to BOKF and not otherwise filed by the borrower. The listed documents include: (a) annual financial statements of the borrower; (b) other annual or periodic financial information related to the borrower or the Facility; and (c) event notices related to the Facility or the offering, for a series of listed events drawn from those in Rule 15c2-12.

17. If the Brogdon-controlled borrower fails to provide BOKF with annual financial statements or the other required annual financial information by the date specified in the CDA, and the borrower has also not provided BOKF with notice that the documents have otherwise been filed, the CDAs require BOKF to file notice of the failure on EMMA "without further direction or instruction" from the borrower and "in a timely manner."

### **III. The BOKF Corporate Trust Department**

18. During the Relevant Period, BOKF performed its bond trustee work through the Department, which was part of BOKF's Institutional Wealth Management unit and was made up of between six and ten regional offices.

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<sup>3</sup> Prior to July 1, 2009, municipal issuers made continuing disclosure filings within a decentralized system of private electronic repositories called the Nationally Recognized Municipal Securities Information Repository ("NRMSIR") system. In December 2008, Rule 15c2-12 was amended to designate the EMMA system as the central repository for continuing disclosures by municipal issuers and obligated persons.

19. The trustee work for the Brogdon Bond Offerings was performed exclusively by Tulsa Corporate Trust. Tulsa Corporate Trust had approximately eight employees during the Relevant Period, all of whom sat in close proximity to each other on the same floor in BOKF's offices in Tulsa, Oklahoma.

20. From approximately 2000 until January 2013, Neilson was the regional manager of Tulsa Corporate Trust. In January 2013, another individual took over as regional manager and Neilson became the national sales manager in the Department. Despite the change in title, however, Neilson remained part of the Department and continued to work out of the same location in the Tulsa office. During the Relevant Period, Neilson reported directly to the head of the Department.

21. Following the closing of a Brogdon Bond Offering, a trust administrator in Tulsa Corporate Trust was assigned to the corresponding accounts. Trust administrators received and paid debt service, requested and posted financial statements and other financial information, and tracked the receipt of other compliance items required by the bond documents. In order to do so, administrators used an electronic "tickler" system to remind them of upcoming due dates. During the Relevant Period, however, the tickler system did not permit administrators to track DSRF replenishment payments after a DSRF had been drawn down.

22. During the Relevant Period, the Administrative Investment Review Committee ("AIRCO") reviewed notable account activity within the Department on a monthly basis. AIRCO meetings were run by the head of the Department, to whom each of the regional managers reported, and typically included the Department head, the regional managers, and the trust administrators whose accounts were up for discussion.

23. Though spreadsheets of all past due ticklers were circulated in advance of AIRCO meetings, only those ticklers that lacked a recent "working date" or narrative describing the steps the administrator was taking were actually flagged for AIRCO review. As a result, as long as a trust administrator ensured that this information was complete, their ticklers and accounts would not be reviewed at AIRCO meetings.

24. Though a list of defaulted offerings was also circulated for review and discussion prior to AIRCO meetings, it was the trust administrators themselves who made the determination as to whether to include one of their offerings on the list.

#### **IV. Neilson Was BOKF's Employee Responsible for Activities Related to the Brogdon Bond Offerings, Including Supervision of Other Responsible BOKF Employees**

25. From start to finish, Neilson was the employee responsible for, or exercised supervision over, BOKF's involvement in the Brogdon Bond Offerings. As a senior vice president since 2007, Neilson was the most senior person in Tulsa Corporate Trust responsible for the activities related to the Brogdon Bond Offerings, including supervision of the employees who performed the day-to-day work on the accounts.

26. Prior to a closing, Neilson served as the primary point of contact at BOKF with Brogdon, his counsel, his accountants, bond counsel, and the underwriter concerning the terms, structure, and timing of the offering. Neilson's practice was then to attend the closing and to sign the required documents on behalf of BOKF, including the trust indenture and CDA.

27. After the closing, Neilson supervised and made all key decisions related to the administration of the Brogdon Bond Offerings accounts. Neilson served as trust administrator for at least 24 Brogdon Bond Offerings. As trust administrator, she directed her assistants to set up relevant ticklers, and she corresponded with Brogdon and his assistants regarding debt service payments, trustee fees, financial statements, and other compliance items, or directed others to do so. Neilson also instructed others in Tulsa Corporate Trust to draft and file (or refrain from filing) notices on EMMA, subject to her review and approval.

28. Even for those Brogdon Bond Offerings for which Neilson never served as trust administrator, or which she assigned to another member of Tulsa Corporate Trust to serve as trust administrator, she served as the external point of contact and primary decisionmaker.

29. To the extent other members of Tulsa Corporate Trust were technically assigned as trust administrators for certain Brogdon Bond Offerings, they viewed these as assignments in name only. Neilson asked to be copied on all external email correspondence regarding the Brogdon Bond Offerings, and typically did not permit other members of Tulsa Corporate Trust to contact Brogdon directly. The other members of Tulsa Corporate Trust sought Neilson's approval for the filing of any EMMA notices regarding the Brogdon Bond Offerings. These practices were fundamentally different than those employed for accounts not involving Brogdon.

**V. BOKF and Neilson Concealed Problems and Red Flags Related to the Brogdon Bond Offerings**

30. During the Relevant Period, BOKF knew of at least four persistent red flags in connection with the Brogdon Bond Offerings: (a) Brogdon drew down on DSRFs and failed to replenish them in the manner prescribed by the trust indentures; (b) Brogdon failed to provide or file annual financial statements on EMMA; (c) Brogdon sent checks on the day debt service was due and, at times, several days after the due date; and (d) the Facility serving as collateral for one of the offerings, the Sumner Offering, had been closed since 2006.

31. Instead of disclosing or notifying bondholders of these problems, as required, BOKF and Neilson failed to disclose them while continuing to serve as trustee for new Brogdon Bond Offerings and other bond offerings through which Brogdon-owned Facilities were sold.

**A. Failures to Replenish DSRFs**

32. During the Relevant Period, the Brogdon Bond Offerings had a cumulative DSRF deficiency of between \$1.1 million (in early 2007) and nearly \$4.0 million (in August 2014). On July 9, 2015, the day Neilson was terminated by BOKF, the cumulative DSRF deficiency was nearly \$3.5 million.

33. When Brogdon or one of his assistants authorized a DSRF draw, a member of Tulsa Corporate Trust would then transfer the funds from the DSRF to make the debt service payment. Though Tulsa Corporate Trust periodically requested that Brogdon replenish the DSRFs as required—monthly payments of 1/12 the draw down for 12 months—Brogdon rarely sent such replenishment payments and never fully replenished the DSRFs.

34. Neither Neilson nor other members of Tulsa Corporate Trust filed material event notices on EMMA regarding Brogdon’s failures to replenish the DSRFs for the Brogdon Bond Offerings. Members of Tulsa Corporate Trust understood from Neilson that it was her practice not to file such notices for the Brogdon Bond Offerings, as opposed to other offerings. Because they took direction from Neilson on all aspects of the administration of the Brogdon Bond Offering accounts, and Neilson did not instruct them to file such notices, they did not make these filings or otherwise notify bondholders of these failures.

35. Brogdon’s failures to replenish DSRFs constituted events of default under the trust indentures for the Brogdon Bond Offerings. Neilson and others in Tulsa Corporate Trust knew, or learned at some point during the Relevant Period, that the failure to replenish a DSRF was an event of default for the Brogdon Bond Offerings. For example, in a March 2010 email to one of Brogdon’s assistants regarding late debt service payments for an offering, Neilson stated that this put her “in an extremely awkward position” because “the Reserve Fund has previously been used and not replenished and I did not call a default.” Nevertheless, prior to Neilson’s termination in July 2015, BOKF neither filed suit against Brogdon nor polled bondholders to determine their desired course of action, as required.

## **B. Failures to File Annual Financial Statements**

36. Brogdon rarely provided to BOKF, or filed on EMMA himself, the required annual financial statements for the Brogdon Bond Offerings. When he did so, these financial statements were typically not audited and were provided after the dates required by the CDAs. As of July 9, 2015, the date of Neilson’s termination, Brogdon had failed to file all required annual financial statements for each of the 20 Brogdon Bond Offerings that were either outstanding at the time, or that had been paid off since January 1, 2014. For many of these offerings, Brogdon failed to file annual financial statements for multiple years.

37. Prior to Neilson’s termination, BOKF only filed EMMA notices regarding these failures on three occasions, two of which are discussed below in Paragraph 39. Though members of Tulsa Corporate Trust, including Neilson, reached out to Brogdon and his assistants to request these financial statements, they typically did not receive them.

38. Though the CDAs required BOKF to file an EMMA notice stating that the Brogdon-controlled borrower had failed to file annual financial statements, without further direction from the borrower, the practice within Tulsa Corporate Trust was not to file such notices. Members of Tulsa Corporate Trust understood from Neilson that this was the manner in which the Brogdon accounts, unlike the non-Brogdon accounts, were to be administered.



39. In early 2015, when a member of Tulsa Corporate Trust filed failure-to-file notices for two Brogdon Bond Offerings without Neilson's approval, Neilson told that individual, and others in Tulsa Corporate Trust, not to file any further notices for the Brogdon Bond Offerings. In particular, Neilson told members of Tulsa Corporate Trust that they were not to file such notices for those offerings underwritten by Brogdon's primary underwriter, Underwriter A, because Underwriter A was being investigated by the Financial Industry Regulatory Authority.

40. These instructions were contrary to Neilson's statements in AIRCO meetings and emails about the importance of promptly filing such notices because of the Commission's Municipalities Continuing Disclosure Cooperation Initiative announced on March 10, 2014 ("MCDC Initiative").

41. Additionally, in 2013 and 2014, Neilson signed waivers of the annual audited financial statement requirement for at least one Brogdon Bond Offering, in a manner that was not permitted by the terms of that offering's trust indenture or CDA.

### **C. Receipt of Late Checks**

42. Tulsa Corporate Trust routinely received debt service checks for the Brogdon Bond Offerings on the day debt service was due. Because checks typically take at least a day to clear, however, these funds were not available to make a debt service payment the same day they were received. Nevertheless, Tulsa Corporate Trust often made seemingly timely debt service payments to bondholders because Neilson and others in Tulsa Corporate Trust (at Neilson's direction) temporarily overdrawed BOKF accounts to make the payment.

43. Brogdon's assistants asked members of Tulsa Corporate Trust to hold checks until the end of the day (or the following day) so that the checks did not clear Brogdon's bank account the same day. According to one member of Tulsa Corporate Trust, Brogdon debt service checks bounced on at least two occasions since 2013. Members of Tulsa Corporate Trust described this practice as fundamentally different from their experience with non-Brogdon accounts.

44. As the trust administrator responsible for many of the Brogdon accounts, Neilson participated in this practice and instructed others on it. In emails to Brogdon's assistants in 2010 and 2011, Neilson refers to multiple overdrafts by her in order to make debt service payments; in one such email, Neilson states: "I just know we can[']t do this every month. I won't be here, I will be fired and the next guy will just put it in default. We've got to have the money when the bondholders expect it."

45. In another email to Brogdon, in October 2014, Neilson asks Brogdon for "help" regarding a debt service payment due that day, warns of potential broker complaints about a late or missed payment, and notes that she is "not quite ready to retire."

#### **D. The Sumner Offering**

46. Neilson served as the administrator for Brogdon's Sumner Offering from the date of its issuance, in February 2002, until March 2013.

47. The DSRF for the Sumner Offering was drawn down in 2005 and never fully replenished. By 2006, the Facility serving as collateral for the offering was closed and no longer generating revenue to pay bondholders. Neilson knew of the Facility's closure; in fact, a tickler assigned to Neilson, with a due date of June 30, 2006, stated that "this facility is closed so no financials are done/paid by guarantor." This tickler was included in the materials circulated prior to numerous AIRCO meetings, and remained in the Tulsa Corporate Trust tickler system until at least 2013.

48. An account review for the Sumner Offering in April 2008, which Neilson signed, shows that there was a nearly \$170,000 DSRF deficiency and that the financial statements for the offering were not current.

49. None of these facts were disclosed to bondholders by BOKF.

50. As result, Neilson knew the importance of the Sumner Offering to Brogdon's reputation and the viability of future offerings. For example, in a February 2014 email to one of Brogdon's assistants, following a missed debt service payment for the Sumner Offering (which was ultimately made), Neilson stated: "Sumner didn't pay. It always pays . . . that's the glue holding him together. This is not good!!! When?"

#### **VI. Escalation of Concerns Internally at BOKF**

51. At times, members of Tulsa Corporate Trust raised concerns with Neilson about the Brogdon Bond Offerings. They described the offerings to her as a "house of cards" or that Brogdon was "robbing Peter to pay Paul," phrases they also heard used by brokers who called with questions about the status of the bonds.

52. In 2012, Neilson wrote an email to Brogdon requesting overdue financial statements for multiple Brogdon Bond Offerings in which she indicated that she had heard threats "from some mighty unhappy people, threatening GA Securities Dept, call[ing] these Ponzi schemes . . . the more ammunition [I] have the better off you all are." Nevertheless, Neilson never escalated these complaints internally at BOKF and did not express concerns to others in Tulsa Corporate Trust about the offerings.

53. While certain Brogdon Bond Offerings are listed on the materials circulated in advance of the AIRCO meetings prior to Neilson's departure, there is no evidence that AIRCO conducted any review of these accounts at its meetings.

54. In or about August 2013, the other members of Tulsa Corporate Trust who worked on the Brogdon Bond Offerings raised concerns about the administration of the accounts with the

individual who took over for Neilson as regional manager earlier that year. When this individual ultimately confronted Neilson about these concerns, Neilson told her not to worry about the offerings and assured the person that she had them under control.

55. Department management took no corrective action with respect to Neilson's administration of the Brogdon Bond Offerings until her termination in July 2015.

## **VII. Impact on Subsequent Offerings**

56. Despite the persistent problems with the Brogdon Bond Offerings described above, BOKF, led by Neilson, continued to serve as indenture trustee and dissemination agent for new offerings involving Brogdon and his Facilities during the Relevant Period.

57. BOKF served as trustee for one new Brogdon Bond Offering in 2008, two new offerings in each of 2009 and 2010, one new offering in 2011, five new offerings in each of 2012 and 2013, and one new offering in 2014. For both BOKF and Neilson, Brogdon and the Brogdon Bond Offerings represented a consistent source of new business.

58. Brogdon stopped raising money through new bond offerings in March 2014, at which point he began selling his Facilities to third parties. Some of these sales were financed through new bond offerings whereby a third party served as the borrower and used the proceeds of the offering to purchase the Facility from Brogdon.

59. Between August 2014 and July 2015, BOKF, led by Neilson, served as trustee for six such offerings, which were underwritten by Underwriter A. The proceeds of five of these offerings were used to pay off prior Brogdon Bond Offerings secured by the same Facility. At the time these Brogdon Bond Offerings were paid off, the prior offerings had a cumulative DSRF deficiency of \$822,567.34. Prior to her termination, Neilson's practice was to attend these closings and sign documents on behalf of BOKF at them.

60. By at least 2014, in the wake of the announcement of the MCDC Initiative, Neilson and others in Tulsa Corporate Trust knew that disclosure of the issues regarding the Brogdon Bond Offerings could negatively impact Underwriter A's ability to underwrite new offerings involving Brogdon or his Facilities.

61. For example, in an October 2014 email to Brogdon regarding Brogdon's failure to replenish the DSRF for one of his outstanding offerings, which was to be paid off with the proceeds of a new offering, Neilson noted that "this could cause problems for the underwriter at this time" because "[t]here are a lot of eyes watching what happens here" such that "something like this could bring everything to a halt."

62. Similarly, in a January 2015 email from another member of Tulsa Corporate Trust to Brogdon, which described DSRF deficiencies for eight Brogdon Bond Offerings underwritten by Underwriter A, the member of Tulsa Corporate Trust stated that "[w]ith more strict guidelines regarding disclosure notification in place now, the draw notifications will raise red flags with

bondholders and will affect [Underwriter A's] ability to sell any future bonds." Neilson requested that the members of Tulsa Corporate Trust compile this DSRF deficiency information. Neilson also conveyed the concerns expressed in the email to the member of Tulsa Corporate Trust before that individual sent the email.

63. By 2014, Neilson also knew that Brogdon's prior failures to provide required annual financial statements could negatively impact Underwriter A's ability to continue to sell Brogdon bonds, or to underwrite new offerings involving Brogdon's Facilities.

64. Neilson routinely spoke with the CEO of Underwriter A, and copied that person on emails, regarding the need to collect and post updated annual financial information for the Brogdon Bond Offerings underwritten by Underwriter A.

65. In 2014, Neilson instructed other members of Tulsa Corporate Trust to seek the missing financials for the Brogdon Bond Offerings from Brogdon's assistants and accountants, and told them about the potential impact on Underwriter A if these documents were not received.

66. In emails to one of Brogdon's assistants in late 2014, Neilson asked whether "[i]f I put a notice up that you are not in compliance, nothing will close in the future?" and noted that the lack of financials was "not good for the Underwriter" such that Underwriter A "may be subject to fines any day!" Neilson instructed other members of Tulsa Corporate Trust to seek the missing financials for the Brogdon Bond Offerings from Brogdon's assistants and accountants, and told them about the potential impact on Underwriter A if these documents were not received.

## **VIII. Violation of the Federal Securities Laws**

67. Brogdon violated the antifraud provisions of the federal securities laws by (a) making material misrepresentations to investors about his compliance with continuing disclosure obligations in prior Brogdon Bond Offerings; and (b) engaging in a scheme to defraud and fraudulent course of business by systematically failing to replenish the DSRFs and concealing that his Facilities were generating insufficient revenue to cover debt service obligations for prior offerings by not making required EMMA filings, while simultaneously raising new money through new offerings from unsuspecting bondholders.

68. As a result of the conduct described above, BOKF caused Brogdon's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

### **BOKF's Remedial Efforts**

69. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

## Undertakings

70. Respondent has undertaken to:
- a. Implement additional policies and procedures regarding the acceptance of new unrated conduit municipal financing business, including: (i) review and approval of the engagement by senior Department management, risk, legal, and compliance; and (ii) review of appropriate negative news searches on the proposed borrowers, obligated persons, and underwriters;
  - b. Enhance the tickler system used by the Department for unrated conduit municipal financings by providing a set of mandatory ticklers including, at least, ticklers for the receipt of required annual financial information, the receipt of payments to replenish a DSRF that has been drawn down, and appropriate EMMA filings or other bondholder notifications if such information or payments are not received;
  - c. Implement automated reporting on DSRF balances for all Department accounts, such that senior Department management, risk, legal, and compliance may run global or concentration reports on DSRFs that have been drawn down or are otherwise below their required levels;
  - d. Enhance AIRCO review, or review by another similar supervisory committee created by the Department, for unrated conduit municipal financings to include review of all outstanding and past-due ticklers, with a particular focus on high risk ticklers and the mandatory ticklers described above;
  - e. Provide training to all Department employees regarding relevant corporate trust administration subjects, including: (i) review of trust indentures and CDAs, and the corresponding duties and obligations of each transaction participant (including BOKF) under those documents; (ii) making required or appropriate EMMA filings or other bondholder notifications; (iii) use of the tickler system and other monitoring systems in order to ensure compliance items are appropriately cataloged; (iv) participation in the AIRCO review process and other supervisory review processes, to ensure that compliance issues and other red flags are escalated for review; and (v) the Department's whistleblower policies and the procedure by which to report complaints; and
  - f. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent

agrees to provide such evidence. The certification and supporting material shall be submitted to Sandeep Satwalekar, Assistant Regional Director, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

#### IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent BOKF cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent shall comply with the undertakings enumerated in Section III above.

C. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$984,200.73, prejudgment interest of \$83,520.63, and a civil money penalty of \$600,000.00 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

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

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying BOKF 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 Lara S. Mehraban, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281.

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

E. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$600,000.00 based upon its cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields  
Secretary