

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 101043 / September 17, 2024**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-22123**

**In the Matter of**

**KAUFMAN, HALL & ASSOCIATES, LLC**  
**AND PONDER & COMPANY,**

**Respondents.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE AND CEASE-**  
**AND-DESIST PROCEEDINGS**  
**PURSUANT TO SECTIONS 15B AND**  
**21C OF THE SECURITIES**  
**EXCHANGE ACT OF 1934, MAKING**  
**FINDINGS, AND IMPOSING**  
**REMEDIAL SANCTIONS AND A**  
**CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15B and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Kaufman, Hall & Associates, LLC (“Kaufman Hall”) and Ponder & Company (“Ponder”), (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Respondents admit the facts set forth in Section III below, acknowledge that their conduct violated the federal securities laws, admit the Commission’s jurisdiction over them and the subject matter of these proceedings, and consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15B and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

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

#### Summary

1. The federal securities laws impose recordkeeping requirements on municipal advisors, which are intended to facilitate the Commission's inspections and examinations of municipal advisors and assist the Commission in evaluating a municipal advisor's compliance with the applicable federal securities laws, including the rules of the Municipal Securities Rulemaking Board ("MSRB"). These recordkeeping requirements require, among other things, that municipal advisors maintain and preserve all written communications relating to municipal advisory activities for at least five years.

2. These proceedings arise out of the failure of certain Kaufman Hall and Ponder employees, including at senior levels, to adhere to these recordkeeping requirements and Respondents' own policies. Using unapproved electronic communication methods, these employees communicated with regard to municipal advisory activities both internally and externally by text messages ("off-channel communications").

3. From at least July 2020 to December 2023 (the "relevant period"), multiple employees of Kaufman Hall and Ponder sent and received off-channel communications relating to municipal advisory activities. Kaufman Hall and Ponder did not maintain or preserve certain of these written communications. Kaufman Hall's and Ponder's failures involved employees at various levels of authority, including both municipal advisor representatives and municipal advisor principals.<sup>2</sup> As a result, Kaufman Hall and Ponder violated Section 17(a) of the Exchange Act and Rule 15Ba1-8 thereunder, and MSRB Rules G-8 and G-9.

4. Some of Kaufman Hall's and Ponder's supervisors, who were responsible for preventing this misconduct, themselves failed to comply with these recordkeeping requirements, as well as the Respondents' own policies, by sending and receiving off-channel communications relating to municipal advisory activities. Kaufman Hall and Ponder failed to implement and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable recordkeeping requirements. As a result, Kaufman Hall and Ponder violated MSRB Rule G-44. By violating MSRB Rules G-8, G-9 and G-44, Kaufman Hall and Ponder violated Section 15B(c)(1) of the Exchange Act.

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> MSRB Rule G-3(d)(i)(A) defines a "municipal advisor representative" to mean "a natural person associated with a municipal advisor who engages in municipal advisory activities on the municipal advisor's behalf, other than a person performing only clerical, administrative, support or similar functions." MSRB Rule G-3(e)(i) defines a "municipal advisor principal" to mean "a natural person associated with a municipal advisor who is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons."

## **Respondents**

5. Kaufman, Hall & Associates, LLC is a limited liability company headquartered in Chicago, Illinois. Kaufman Hall has been registered with the Commission and the MSRB as a municipal advisor since December 2014 and was registered during the relevant time period. On May 1, 2023, Kaufman Hall acquired Ponder.<sup>3</sup>

6. Ponder & Company is a corporation formerly headquartered in Brentwood, Tennessee. Ponder was registered with the Commission and the MSRB as a municipal advisor from November 2014 until January 2024 and was registered during the relevant time period. On May 1, 2023, Kaufman Hall acquired Ponder. On November 11, 2023, Ponder filed a Form MA-W with the Commission withdrawing its municipal advisor registration.

## **Recordkeeping Requirements for Municipal Advisors**

7. Section 17(a)(1) of the Exchange Act requires municipal advisors to make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. Exchange Act Rule 15Ba1-8 requires that municipal advisors make and keep true, accurate, and current originals or copies of all written communications received, and originals or copies of all written communications sent, by such municipal advisor relating to municipal advisory activities, regardless of the format of such communications, and for such records to be maintained and preserved for a period of not less than five years, the first two years in easily accessible places.

8. MSRB Rule G-8(h)(i) requires municipal advisors to make and keep current all books and records described in Exchange Act Rule 15Ba1-8(a)(1)-(8), which includes all written communications relating to municipal advisory activities. MSRB Rule G-9(h)(i) requires the municipal advisor to preserve these records for a period of not less than five years.

9. Section 15B(c)(1) of the Exchange Act prohibits municipal advisors from engaging in any act, practice, or course of business that is in contravention of any rule of the MSRB.

## **Policies and Procedures**

10. During the relevant period, Kaufman Hall and Ponder each maintained certain policies and procedures designed to ensure the maintenance and retention of municipal advisory-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

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<sup>3</sup> After the acquisition, Ponder's associated persons became associated persons of Kaufman Hall, and Kaufman Hall assumed all Ponder's advisory contracts and took possession of all Ponder's books and records.

11. Kaufman Hall's and Ponder's employees were advised that the use of unapproved electronic communications methods was not permitted, and that they should limit messaging relating to municipal advisory activities to firm email accounts.

12. For each Respondent, messages sent through firm-approved communications methods were monitored, subject to review, and, when appropriate, archived. Certain messages sent through unapproved communications methods were not monitored, subject to review or archived.

13. Both Respondents asked all employees, including supervisors, to acknowledge in writing, for Kaufman on a quarterly basis and Ponder on an annual basis, that they had read, understood, and complied with their respective firm's policies and procedures, including the electronic communications policies. Neither Kaufman Hall nor Ponder had processes in place to review, test or modify its reliance on employees' written acknowledgments.

14. All of the Kaufman Hall and Ponder employees that sent or received off-channel communications, including supervisors, acknowledged in writing that they had read, understood and complied with their respective firm's policies and procedures, including the electronic communications policies yet did not follow these policies. Kaufman Hall's and Ponder's reliance on employees' written acknowledgements was not reasonably designed to achieve compliance with recordkeeping requirements because it was not reliable absent appropriate follow-up measures. Accordingly, Kaufman Hall's and Ponder's supervisory systems were not reasonably designed to achieve compliance with recordkeeping requirements.

### **Recordkeeping Failures**

15. In July 2023, the Commission staff commenced a risk-based initiative to investigate whether municipal advisors were properly retaining messages related to municipal advisory activities that were sent and/or received by employees using unapproved electronic communication methods. Kaufman Hall, on its own behalf and on behalf of Ponder, cooperated with the investigation by voluntarily interviewing employees and reviewing messages found on employees' electronic devices.

16. The Commission staff's investigation uncovered off-channel communications at all seniority levels of Kaufman Hall and Ponder. The investigation determined that, during the relevant period, multiple Kaufman Hall and Ponder personnel had engaged in off-channel communications relating to municipal advisory activities that involved both other employees of Kaufman Hall and Ponder, respectively and external contacts that were not preserved.

17. For example, a Ponder firm principal exchanged text messages with a municipal issuer client relating to the client's credit rating and outlook. In another example, a Kaufman Hall representative exchanged text messages with a municipal issuer client relating to the decision to issue taxable versus tax-exempt bonds.

## Violations

18. As a result of the conduct described above, during the relevant period, Kaufman Hall and Ponder willfully<sup>4</sup> violated Section 17(a) of the Exchange Act and Rule 15Ba1-8 thereunder and MSRB Rules G-8 and G-9, which require municipal advisors to make and preserve for at least five years originals or copies of all written communications received or sent relating to municipal advisory activities.

19. As a result of the conduct described above, during the relevant period, Kaufman Hall and Ponder willfully violated MSRB Rule G-44, which requires municipal advisors to, among other things, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable MSRB rules.

20. As a result of Kaufman Hall's and Ponder's willful violations of MSRB Rules G-8, G-9 and G-44, Kaufman Hall and Ponder willfully violated Section 15B(c)(1) of the Exchange Act, which prohibits municipal advisors from making use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in contravention of any rule of the MSRB.

## Remedial Efforts

21. In determining to accept the Offer, the Commission considered remedial steps promptly undertaken by Kaufman Hall and the cooperation afforded the Commission staff. Prior to this action, Kaufman Hall modified its policies and procedures, and increased training concerning the use of approved communications methods and began implementing significant

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<sup>4</sup> "Willfully," for purposes of imposing relief under Section 15B of the Exchange Act, "means no more than that the person charged with the duty knows what he is doing." Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965). The decision in The Robare Group, Ltd. v. SEC, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

changes to the technology available to employees. The former Ponder employees are now subject to Kaufman Hall's revised policies and procedures, training, and technology.

### **Undertakings**

22. In addition, Kaufman Hall has undertaken to:

a. Within 180 days of the entry of this Order: (i) establish reasonably designed written policies and procedures regarding the preservation of electronic communications; (ii) conduct a training of all associated persons who engage in municipal advisory activities regarding the preservation of electronic communications, to be provided by a person or entity with relevant expertise in the preservation of electronic communications and recordkeeping requirements under the Exchange Act, the rules and regulations thereunder, and under MSRB Rules; and (iii) establish a program of periodic training of all associated persons who engage in municipal advisory activities regarding the preservation of electronic communications. The written policies and procedures should include the designation of a municipal advisor principal at Kaufman Hall responsible for ensuring compliance by Kaufman Hall with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of the initial training and the periodic training program.

b. Certify, in writing, compliance with the undertakings set forth above. The certification shall: (i) identify the undertakings; (ii) provide written evidence of compliance with the undertakings in the form of a narrative; and (iii) be supported by exhibits sufficient to demonstrate compliance with the undertakings. The Commission staff may make reasonable requests for further evidence of compliance with the undertakings, and Kaufman Hall agrees to provide such evidence at the time and in the manner specified by Commission staff or advise the Commission staff of any request for further evidence that Kaufman Hall considers unreasonable. The certification, written evidence of compliance and supporting exhibits shall be submitted to LeeAnn Ghazil Gaunt, Chief, Public Finance Abuse Unit, Securities and Exchange Commission, 33 Arch Street, 24<sup>th</sup> Floor, Boston, MA 02110, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than the one-year anniversary of the date of this order.

c. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

### **IV.**

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

Accordingly, pursuant to Sections 15B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Kaufman Hall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 15Ba1-8 thereunder and Section 15B(c)(1) of the Exchange Act and MSRB Rules G-8, G-9 and G-44.

B. Respondent Kaufman Hall is censured.

C. Respondent Kaufman Hall shall comply with the undertaking enumerated in paragraph 22.

D. Respondent Kaufman Hall shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$324,000 to the Securities and Exchange Commission, of which \$81,000 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 \$243,000 shall be transferred to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (1) Respondent Kaufman Hall may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent Kaufman Hall 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 Kaufman Hall 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 Kaufman, Hall & Associates, LLC and Ponder and Company as the Respondents 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 LeeAnn Ghazil Gaunt, Chief, Public Finance Abuse Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110.

E. 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 Kaufman Hall 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

Kaufman Hall'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 Kaufman Hall 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 Kaufman Hall by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman  
Secretary