

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89347 / July 20, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5546 / July 20, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19885

In the Matter of

JOHN J. MARVIN,

Respondent.

**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 John J. Marvin (“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 negligent conduct by John J. Marvin (“Marvin”), a registered representative with UBS Financial Services Inc. (“UBS”). In 2015 and 2016, Marvin placed orders during retail order periods for new issue municipal bonds with UBS’s syndicate desk on behalf of a customer. The customer was an unregistered broker engaged in the business of buying and immediately reselling, or “flipping,” new issue municipal bonds. Municipal issuers hold retail order periods to prioritize the sale of bonds to retail investors, and often require that the customer’s zip code be included in the order to denote that the customer resides in the issuer’s jurisdiction and is entitled to retail priority. Marvin negligently submitted some of his flipper customer’s orders with inaccurate zip codes during retail order periods.

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

Respondent

3. **John J. Marvin**, age 58, resides in North Palm Beach, Florida. From 2007 to the present, Marvin has served as a registered representative and investment adviser representative at UBS, buying and selling municipal bonds and other securities for his customers. Marvin has Series 7 and 63 licenses.

Related Entity and Individuals

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.

5. **Sharlene Mesite** (“Mesite”), age 58, bought and sold new issue municipal bonds as an unregistered broker during the relevant period. The Commission filed an enforcement action against Mesite in August 2018.²

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.

² SEC v. Core Performance Management, LLC, et al., 18-CV-81081-BB (S.D. Fla., filed Aug. 14, 2018) (settled action against Mesite, Scherr and others for acting as unregistered brokers and for engaging in fraudulent practices in connection with flipping new issue municipal bonds; based on the entry of an injunction against Mesite and Scherr, the Commission imposed associational bars against them).

6. **James P. Scherr** (“Scherr”), age 63, bought and sold new issue municipal bonds as an unregistered broker during the relevant period. The Commission filed an enforcement action against Scherr in August 2018.³

Background on Negotiated Offerings of Municipal Bonds

7. 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 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.

8. 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.

9. 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.

10. 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

³ Id.

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).

Marvin Negligently Submitted Improper Orders During Retail Order Periods

11. Since 2007, Marvin has worked as a financial adviser at UBS. As a financial adviser, Marvin is compensated on a 100% commission basis for municipal bond transactions.

12. In 2015, Marvin opened a new customer account for James Scherr, who had been Marvin's customer at UBS since at least 2009. Scherr introduced Marvin to Scherr's employee, Sharlene Mesite. Marvin understood that Mesite traded new issue municipal bonds on Scherr's behalf and all of Marvin's communications regarding the account's trading activity were with Mesite. On at least two occasions between July 2015 and October 2015, Marvin described Mesite in written communications as a "flipper." He also knew that Mesite and Scherr resided in South Florida.

13. Between April 2015 and June 2016, Marvin submitted 118 orders for new issue municipal bonds on behalf of Mesite during retail order periods to the UBS syndicate desk. In connection with some of those orders, Marvin submitted zip codes corresponding to the locations of the issuers in those offerings to the UBS syndicate desk. Issuers require zip codes with retail orders to verify that the customer is an individual residing in a specific jurisdiction. Inaccurate zip codes were submitted to the underwriting syndicate with 27 of those orders. Marvin acknowledged that he submitted inaccurate zip codes to the UBS syndicate desk in three bond offerings so that Mesite's orders would receive the highest priority. Marvin negligently submitted these inaccurate zip codes with Mesite's orders when he should have known that they did not correspond to Mesite's residence. The submission of zip codes with Mesite's orders had the effect of giving the orders retail priority, and created the misleading impression that Mesite's orders were *bona fide* retail orders.

Violations

Marvin Violated MSRB Rule G-17

14. 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.⁴ Negligence is sufficient to establish a violation of MSRB Rule G-17.

⁴ 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.

15. Marvin willfully⁵ violated his duty of fair dealing under MSRB Rule G-17 by negligently submitting orders from Mesite during retail order periods, some of which contained inaccurate zip codes.

Marvin Violated MSRB Rule G-11(k)

16. 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.

17. Marvin submitted orders for new issue municipal bonds during retail order periods for Mesite that did not meet the issuer's eligibility criteria. In addition, by submitting inaccurate zip codes, Marvin provided inaccurate identifying information required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with some of those orders. As a result, Marvin 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 Marvin'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 Marvin be, and hereby is, subject to the following limitations on his activities for twelve months, commencing immediately upon the entry of this Order:

⁵ "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).

Respondent shall not offer, purchase, or sell negotiated new issue municipal securities on behalf of (1) any broker, dealer, investment adviser, or municipal securities dealer, or (2) any customer or client of any broker, dealer, investment adviser, or municipal securities dealer, for the time period specified above.

B. Respondent Marvin shall pay disgorgement of \$23,821 and prejudgment interest of \$4,145 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Respondent Marvin shall also 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.

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 Marvin 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