

## [Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION— SEC announces settlements in municipal bond ‘flipping’ and kickback schemes, \(Nov. 8, 2018\)](#)

Securities Regulation Daily Wrap Up

[Click to open document in a browser](#)

By Rebecca Kahn, J.D.

The SEC charged two firms and 18 individuals in a scheme to improperly divert new issue municipal bonds to broker-dealers at the expense of retail investors. The defendants – known in the industry as "flippers" – allegedly purchased new issue municipal bonds, often by posing as retail investors to gain priority in bond allocations. The defendants then "flipped" the bonds to broker-dealers for a fee. The SEC also charged a municipal underwriter for accepting kickbacks from one of the flippers ([Litigation Release No. 24337](#), November 7, 2018); [SEC v. Core Performance Mgmt., LLC](#) (S.D. Fla., August 16, 2018); [SEC v. RMR Asset Mgmt. Co.](#) (S.D. Cal.)).

The SEC alleged that from at least 2009 to 2016, Core Performance Management LLC ("CPM"), RMR Asset Management Co. ("RMR"), their principals, and certain of their associates, misrepresented their identities to gain priority in new issue municipal bond allocations. Municipal issuers typically require underwriters to give retail investor orders the highest priority when allocating new issue bonds, particularly retail investors within the municipal issuer's jurisdiction. These defendants allegedly used fictitious business names, falsely linked their orders to ZIP codes within the issuer's jurisdiction, and split orders among dozens of accounts. After acquiring the bonds, the defendants quickly resold them to broker-dealers, typically for a fixed, pre-arranged commission. They often sought to hide the flipping activity from issuers and underwriters by manipulating sales tickets.

**CPM charges.** The SEC alleged that CPM, its principal James P. Scherr, and three associates Deborah B. Dora, Sharlene F. Mesite, and Anadel R. Pinzon violated Exchange Act Section 10(b) and Rule 10b-5 thereunder; that CPM and Dora also aided and abetted those violations; that Scherr and CPM violated Securities Act Sections 17(a)(1) and (3); that CPM, Scherr, Dora, Mesite, Pinzon, and associate James J. O'Neil violated Exchange Act Section 15(a)(1); that CPM, Dora, Mesite, Pinzon, and Scherr violated Rule G-17 of the Municipal Securities Rulemaking Board ("MSRB"); and that Scherr is liable as a control person under Exchange Act Section 20(a).

**RMR charges.** The SEC further alleged that RMR, its principal Ralph M. Riccardi, and associates Bruce A. Broekhuizen, Douglas J. Derryberry, David R. Frost, Neil P. Kelly, John M. Kirschenbaum, Timothy J. McAloon, Jocelyn M. Murphy, Dewey T. Tran, and Philip A. Weiner violated Exchange Act Section 10(b) and Rule 10b-5 thereunder; that RMR, Riccardi, Frost, and Kirschenbaum aided and abetted these violations; that RMR, Riccardi, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, Murphy, Tran, and Weiner, as well as associates Richard C. Gounaud, David S. Luttbeg, and Michael S. Murphy violated Exchange Act Section 15(a)(1); and that RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, Jocelyn Murphy, Riccardi, Tran, and Weiner violated MSRB Rule G-17.

**Settlements and ongoing litigation.** CPM, Scherr, Dora, Mesite, O'Neil, and Pinzon settled the SEC's charges without admitting or denying the allegations. In addition to injunctions, industry bars and suspensions, and agreeing to cooperate with the SEC's ongoing investigation, CPM and Scherr are jointly and severally liable for disgorgement plus prejudgment interest in the amount of \$746,682. In addition, Scherr will pay a \$150,000 penalty.

In addition, RMR, Riccardi, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, Luttbeg, McAloon, Tran, and Weiner settled the SEC's charges without admitting or denying the allegations, agreeing to injunctions, to return

allegedly ill-gotten gains with interest, pay civil penalties, be subject to industry bars or suspensions, and to cooperate with the SEC's ongoing investigation.

The SEC's charges against RMR associates Gounaud and the Murphys will be litigated in U.S. District Court for the Southern District of California.

**Kickbacks proceedings.** In a related action, the SEC instituted settled proceedings against Charles Kerry Morris, the former head of municipal underwriting at broker-dealer NW Capital Markets Inc. The SEC found that Morris took kickbacks from Scherr and engaged in a parking scheme in which Morris allocated new issue bonds to Scherr with the understanding that Morris would repurchase them. As a result of this trading, the SEC found that Morris and NW Capital caused Scherr and CPM's improper unregistered broker activity. Specifically, the SEC found that Morris willfully violated Securities Act Sections 17(a)(1) and (3), Exchange Act Section 10(b) and Rules 10b-5(a) and (c) thereunder, MSRB Rule G-17, and caused violations of Exchange Act Section 15(a)(1). The SEC also found that NW Capital willfully violated MSRB Rule G-17, Exchange Act Section 15B(c)(1), and caused violations of Exchange Act Section 15(a)(1). The SEC found that Morris's supervisor, James A. Fagan, failed reasonably to supervise Morris's activities within the meaning of Exchange Act Section 15(b)(6), incorporating Section 15(b)(4)(E), and willfully violated MSRB Rule G-27.

**Settlement.** Morris, NW Capital, and Fagan agreed to settle the charges without admitting or denying the SEC's findings. Morris agreed to pay a total of \$254,009 and to consent to an industry bar. NW Capital agreed to be censured and pay a total of \$87,065 and Fagan agreed to pay a \$10,000 penalty and to consent to a six-month supervisory suspension.

The cases are [No. 9:18-civ-081081-BB](#) and No. 3:18-cv-01895-AJB-LL.

Litigation Release [No. 24337](#).

Attorneys: Nicholas A. Pilgrim for the SEC.

Companies: Core Performance Management, LLC

LitigationEnforcement: BrokerDealers Enforcement FinancialIntermediaries FraudManipulation  
MunicipalSecuritiesNews NewYorkNews