

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

vs.

Gardnyr Michael Capital, Inc. (CRD No. 30520),

Anthony A. Grey (CRD No. 709788),

James M. Pietkiewicz (CRD No. 1317032),
and

[REDACTED]

Respondents.

Disciplinary Proceeding
No. 2009016034101

Hearing Officer – LOM

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: December 19, 2012

INTRODUCTION

Disciplinary Proceeding No. 2009016034101 was filed on December 2, 2011, by the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA") ("Complainant"). Respondents Gardnyr Michael Capital, Inc. ("GMCI"), James M. Pietkiewicz, and [REDACTED] (collectively, "Respondents") submitted an Offer of Settlement ("Offer") to Complainant dated December 14, 2012. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC"), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondents have consented, without admitting or denying the allegations of the Complaint, as well as the amended allegations set forth herein, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, as amended by the accompanying Offer, and to the imposition of the sanctions set forth below, and fully understand that this Order will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by FINRA.

BACKGROUND

Gardnyr Michael Capital, Inc.

GMCI is a FINRA member and has been a member since August 1992. Since at least 2007, GMCI also has been a member of the MSRB. GMCI maintains its principal place of business in Mobile, Alabama and also has an office in Winter Park, Florida. Approximately 20 registered persons are currently associated with the firm. GMCI conducts a general retail securities business and specializes in underwriting and fixed income securities, including municipal securities.

James M. Pietkiewicz

In December 1984, Pietkiewicz registered with FINRA as a General Securities Representative. He subsequently acquired Series 24, 53, and 63 licenses. Since 1984, Pietkiewicz has been associated with several FINRA members. Pietkiewicz is currently associated with GMCI and has been associated with the firm since July 1992.

[REDACTED]

In April 1987, [REDACTED] registered with FINRA as a General Securities Representative. He subsequently acquired Series 24, 27, 53, and 63 licenses. Since January 1987, [REDACTED] has been associated with several FINRA members. [REDACTED] is currently associated with GMCI and has been associated with the firm since March 1992.

Disciplinary History

In December 2011, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from GMCI, wherein the firm agreed to be censured and to be fined \$7,500 for failing to properly and timely report certain municipal securities transactions to the RTRS and for failing to show the correct execution time on the memorandum of 57 municipal securities transactions, in violation of MSRB Rules G-8 and G-14.

In November 1996, NASD accepted an AWC from GMCI and [REDACTED], wherein they agreed to be censured and to be jointly and severally liable for a \$1,000 fine for failing to file Form G-37 within 30 days after the end of the calendar quarter.

Pietkiewicz does not have a relevant disciplinary history.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:¹

1. In ten transactions with retail customers between October 2008 and July 2009, Gardnry Michael Capital, Inc. ("GMCI"), through Anthony A. Grey, interposed personal accounts maintained and controlled by Grey between the firm and the fair or prevailing market for certain municipal bonds. On those transactions, the firm, through Grey, charged excessive markups. GMCI and Grey did not disclose to their customers that one of Grey's accounts had

¹ The findings herein are pursuant to the Offer of Settlement submitted by GMCI, Pietkiewicz, and [REDACTED] and are not binding on any other person or entity named as a respondent in this or any other proceeding.

been interposed or otherwise involved in the transactions or that they had charged excessive markups on the transactions. As a result of the foregoing, GMCI and Grey violated MSRB Rules G-17 and G-30 on all ten transactions.

2. GMCI, through James M. Pietkiewicz, failed to reasonably supervise Grey's handling of the aforementioned municipal bond transactions. The firm, through Pietkiewicz, also failed to implement or enforce its written supervisory procedures ("WSPs"), including its prohibition against interpositioning, its policies regarding excessive markups on municipal securities transactions, and its procedure that required Pietkiewicz to document his review of municipal bond transactions. As a result of the foregoing, GMCI and Pietkiewicz violated MSRB Rule G-27.

3. From at least September 21, 2007 through September 13, 2009, Pietkiewicz functioned as a municipal securities principal for GMCI, while he was not registered or qualified to act in that capacity. GMCI, through its owner, President, and Chief Compliance Officer ("CCO"), [REDACTED] impermissibly allowed Pietkiewicz to act in that capacity. As a result of the foregoing, GMCI violated MSRB Rules G-2 and G-3, and Pietkiewicz and [REDACTED] violated MSRB Rule G-3.

4. Between 2008 and May 31, 2009, GMCI filed five official statements and Form G-36(OS)s with the MSRB late. In August 2009, the firm filed one official statement with the Electronic Municipal Market Access ("EMMA") late. As a result of the foregoing, GMCI violated MSRB Rules G-32 and G-36.

RESPONDENTS AND JURISDICTION

Gardnyr Michael Capital, Inc.

5. GMCI is a FINRA member and has been a member since August 1992.

6. Since at least 2007, GMCI also has been a member of the MSRB.

7. GMCI maintains its principal place of business in Mobile, Alabama and also has an office in Winter Park, Florida. Approximately 20 registered persons are currently associated with the firm.

8. GMCI conducts a general retail securities business and specializes in underwriting and fixed income securities, including municipal securities.

9. By virtue of its current FINRA membership, FINRA possesses jurisdiction over GMCI under Article IV of its By-Laws.

Anthony A. Grey

10. In May 1980, Grey registered with FINRA as a General Securities Representative. He subsequently acquired Series 3, 4, 5, 8, 24, 53, and 63 licenses.

11. Since 1980, Grey has been associated with several FINRA members. Most recently, Grey was associated with GMCI from May 1, 1994 through October 25, 2012.

12. Grey currently is not associated with a FINRA member. Although Grey is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because: (a) Grey was associated with GMCI when the Complaint was filed; and (b) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

James M. Pietkiewicz

13. In December 1984, Pietkiewicz registered with FINRA as a General Securities Representative. He subsequently acquired Series 24, 53, and 63 licenses.

14. Since 1984, Pietkiewicz has been associated with several FINRA members. Pietkiewicz is currently associated with GMCI and has been associated with the firm since July 1992.

15. By virtue of his current registration with FINRA and his current association with GMCI, FINRA possesses jurisdiction over Pietkiewicz under Article V of its By-Laws.

██████████

16. In April 1987, █████ registered with FINRA as a General Securities Representative. He subsequently acquired Series 24, 27, 53, and 63 licenses.

17. Since January 1987, █████ has been associated with several FINRA members. █████ is currently associated with GMCI and has been associated with the firm since March 1992.

18. By virtue of his current registration with FINRA and his current association with GMCI, FINRA possesses jurisdiction over █████ under Article V of its By-Laws.

FACTS

Violative Transactions

19. From at least 2008 through October 25, 2012, Grey was a registered representative of GMCI and worked at its office in Winter Park, Florida.

20. GMCI permitted Grey to use personal accounts that he maintained or controlled as inventory accounts from which he could, through a GMCI account, sell municipal securities to customers and also buy them from customers.

21. In ten transactions with retail customers between October 2008 and July 2009, GMCI, through Grey, interposed a personal account maintained and controlled by Grey between the firm and the fair or prevailing market for certain municipal bonds. A detailed summary of

the series of transactions at issue is attached to the Complaint as Schedule A and incorporated herein by reference.

22. Half of the transactions occurred in the following manner: (a) GMCI, through Grey, purchased municipal bonds from the street in a house account; (b) on the same or following day, GMCI, through Grey, sold the bonds to a personal account that Grey maintained and controlled at a markup of \$1 or less per bond; (c) between one and four business days after the original purchase of the bonds, Grey sold the bonds from his personal account to GMCI at a markup, which varied from trade to trade; and (d) on the same day that GMCI bought the bonds from Grey, the firm, through Grey, sold the bonds to their customers at a price of 75¢ to \$3 more per bond than the firm had paid to buy the bonds. *See* Schedule A to Complaint.

23. The other half of the transactions followed a similar pattern, except that the transactions commenced in a personal account that Grey maintained and controlled at another broker-dealer, instead of in a house account at GMCI. *See* Schedule A to Complaint.

24. The improper markups resulted in excess profits to GMCI and Grey.

25. GMCI and Grey did not disclose to their customers that one of Grey's personal accounts had been interposed or otherwise involved in the transactions or that they had charged excessive markups on the transactions.

Failure to Supervise

26. Since at least 2008, Pietkiewicz has been a registered representative of GMCI and worked at its office in Winter Park, Florida.

27. From at least 2008 through mid-September 2009, Pietkiewicz was responsible for the supervision of the activity in that office, including the municipal securities trading activity of Grey. During that time period, Pietkiewicz was responsible for reviewing Grey's municipal

securities transactions for, among other things, fair pricing violations, excessive markups, and interpositioning.

28. From at least 2008 through mid-September 2009, GMCI's WSPs required the firm and its representatives to determine the fairness of markups on municipal securities based upon a number of factors. The WSPs further provided that:

Historically, the SEC and NASD have indicated that the percentage mark-up for debt securities should be less than the amount charged for equity securities. . . . Generally, the NASD will take exception to and may attempt to charge fraud for any mark-up or mark-down in excess of the lesser of 3% of the transaction price or \$100,000 (except for situations where the 3% limitation is exceeded solely because of a reasonable minimum ticket charge).

29. From at least 2008 through mid-September 2009, another section of GMCI's WSPs, which specifically addressed MSRB rules, prohibited GMCI from selling municipal securities from its own account to a customer "except at an aggregate price that is fair and reasonable, but the markup/down will not exceed 3% without approval of the Designated Principal." In determining the fairness or reasonableness of increased markups on municipal securities, the WSPs provided that the firm and its representatives may consider the following factors: the price or yield of the bond; the time when the bond matures; the size of the order, number of bonds, and amount of money involved; the time held in inventory; the market-away or the value of the same or similar bonds as represented by other dealers; the availability of the bond; and the prevailing market conditions.

30. From at least 2008 through mid-September 2009, GMCI's WSPs also prohibited interpositioning.

31. During that time period, the firm's WSPs required Pietkiewicz to document his review of municipal securities transactions.

32. GMCI, through Pietkiewicz, failed to reasonably supervise Grey's handling of the aforementioned municipal bond transactions and also failed to implement or enforce the foregoing policies regarding markups on municipal securities and interpositioning. Specifically, the firm, through Pietkiewicz, allowed Grey to interpose an account that he maintained and controlled between the firm and the fair market for the aforementioned municipal bonds and to charge excessive markups on the transactions.

33. In addition, Pietkiewicz failed to document his review of Grey's municipal securities transactions, in violation of GMCI's WSPs.

Registration Violations

34. From at least September 21, 2007 through September 13, 2009, GMCI's WSPs identified Pietkiewicz as being responsible for the supervision of, among other areas, the following for its Winter Park office: (a) certain aspects of municipal securities transactions, including new accounts, order tickets, sales charges or markups, suitability, small order executions, and compliance with best execution requirements; (b) certain aspects of municipal underwriting activities, including the underlying security, new accounts, sales charges or markups, underwriting agreements, and compliance with free-riding, withholding, books and records, SEC Rule 15c2-4, and Regulation M requirements; (c) certain MSRB transaction reporting requirements; and (d) certain MSRB recordkeeping requirements.

35. During that time period, Pietkiewicz supervised the foregoing areas for GMCI's Winter Park office, as well as Grey's municipal securities activity.

36. From at least September 21, 2007 through September 13, 2009, Pietkiewicz also was involved in the management, direction, or supervision of the firm's underwriting of municipal securities deals. Pietkiewicz vetted and reviewed the deals that GMCI underwrote,

several of which are set forth in the following section, and he also wrote the interest rate schedules for them.²

37. Despite engaging in the management, direction, and supervision of the foregoing aspects of GMCI's municipal securities business, Pietkiewicz did not pass the Municipal Securities Principal Qualification Examination until November 11, 2010, and thus was not properly registered or qualified to act as a municipal securities principal until that date.

38. From at least September 21, 2007 through September 13, 2009, [REDACTED] the President and CCO of GMCI, was responsible for ensuring that all of GMCI's associated persons were properly registered and qualified.

39. As detailed above, from at least September 21, 2007 through September 13, 2009, GMCI, through [REDACTED] allowed Pietkiewicz to function as a municipal securities principal for the firm, while Pietkiewicz was not registered or qualified to act in that capacity.

Untimely Filing of Official Statements

40. Prior to the rescission of MSRB Rule G-36 on June 1, 2009, MSRB Rule G-36(b)(i) provided that:

Each broker, dealer or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities subject to Securities Exchange Act rule 15c2-12 shall send to the Board or its designee, within one business day after receipt of the official statement from the issuer or its designated agent, but no later than 10 business days after any final agreement to purchase, offer, or sell the municipal securities, the final official statement and completed Form G-36(OS) prescribed by the Board, including the CUSIP number or numbers for the issue.

41. GMCI acted as an underwriter in a primary offering of municipal securities subject to Rule 15c2-12 for The Governmental Utility Services Corporation of the City of

² Pietkiewicz claims to have relinquished his municipal securities supervisory responsibilities on September 13, 2009.

Bessemer (Alabama) Water Supply Revenue Refunding Bonds, Series 2008. The final agreement for the offering is dated April 10, 2008. The firm filed the final official statement and completed Form G-36(OS) for the offering with the MSRB on April 25, 2008 – one business day late.

42. GMCI acted as an underwriter in a primary offering of municipal securities subject to Rule 15c2-12 for the Mobile County, Alabama General Obligation Improvement Bonds, Series 2008. The final agreement for the offering is dated April 17, 2008. The firm filed the final official statement and completed Form G-36(OS) for the offering with the MSRB on May 2, 2008 – one business day late.

43. GMCI acted as an underwriter in a primary offering of municipal securities subject to Rule 15c2-12 for The Russell County Public Building Authority Revenue Warrants (Russell County Public Buildings Project), Series 2008. The final agreement for the offering is dated April 11, 2008. The firm filed the final official statement and completed Form G-36(OS) for the offering with the MSRB on May 5, 2008 – six business days late.

44. GMCI acted as an underwriter in a primary offering of municipal securities subject to Rule 15c2-12 for the West Etowah County Water Authority, Inc. Water Revenue Refunding Bonds, Series 2008. The final agreement for the offering is dated May 14, 2008. The firm filed the final official statement and completed Form G-36(OS) for the offering with the MSRB on May 30, 2008 – one business day late.

45. GMCI acted as an underwriter in a primary offering of municipal securities subject to Rule 15c2-12 for The Blount County Healthcare Authority Hospital Tax Anticipation Refunding Warrants, Series 2009. The final agreement for the offering is dated February 13, 2009. The firm filed the final official statement and completed Form G-36(OS) for the offering with the MSRB on April 17, 2009 – 33 business days late.

46. Since MSRB Rule G-36 was rescinded as of June 1, 2009, MSRB Rule G-32(b)(i)(B)(1) has provided that:

Except as otherwise provided in paragraph (C), (E) or (F) of this subsection (i), the underwriter of a primary offering of municipal securities shall submit the official statement for such offering to EMMA within one business day after receipt of the official statement from the issuer or its designee, but by no later than the closing date.

47. GMCI acted as an underwriter in a primary offering of municipal securities subject to Rule 15c2-12 for the City of Brewton, Alabama General Obligation Warrants, Series 2009. GMCI received the final official statement for the offering on August 6, 2009. The firm filed the final official statement for the offering with EMMA on August 24, 2009 – 11 business days late.

FIRST CAUSE OF ACTION (Excessive Charges)

48. Since at least 2008, MSRB Rule G-17 has required brokers and dealers, in the conduct of their municipal securities activity, to deal fairly with all persons and to not engage in any deceptive, dishonest, or unfair practices.

49. Since at least 2008, MSRB Rule G-30 has required brokers and dealers to sell municipal securities at fair and reasonable prices, including any markup, to their customers and to charge fair and reasonable commissions to customers on sales of municipal securities.

50. GMCI, through Grey charged unfair, unreasonable, and excessive markups on ten municipal bond transactions with retail customers. *See* Schedule A to Complaint.

51. GMCI and Grey knew, or should have known, that they charged unfair, unreasonable, and excessive markups on the trades.

52. GMCI and Grey did not disclose to their customers that an account maintained and controlled by Grey was interposed or otherwise involved in the transactions or that the charges were unfair, unreasonable, and excessive.

53. As a result of the foregoing, GMCI and Grey violated MSRB Rules G-17 and G-30.

SECOND CAUSE OF ACTION (Interpositioning)

54. In ten municipal bond transactions with retail customers, GMCI, through Grey, interposed an account maintained and controlled by Grey between the firm and the fair or prevailing market for the bonds. *See* Schedule A to Complaint.

55. GMCI and Grey did not disclose to their customers that an account controlled by Grey was interposed or otherwise involved in the transactions.

56. As a result of the foregoing, GMCI and Grey violated MSRB Rule G-17.

THIRD CAUSE OF ACTION (Failure to Supervise)

57. Since at least 2008, MSRB G-27 has imposed a general requirement upon firms and their delegates to supervise their municipal securities business.

58. As detailed above, GMCI, through Pietkiewicz, failed to reasonably supervise Grey's handling of the aforementioned municipal bond transactions. Specifically, the firm, through Pietkiewicz, allowed Grey to interpose an account that he maintained and controlled between the firm and the fair market for certain municipal bonds and to charge excessive markups on the transactions.

59. In addition, GMCI, through Pietkiewicz, failed to implement or enforce its WSPs, including its prohibition against interpositioning, its policies regarding excessive markups on

municipal securities transactions, and its procedure that required Pietkiewicz to document his review of municipal bonds transactions.

60. As a result of the foregoing, GMCI and Pietkiewicz violated MSRB Rule G-27.

**FOURTH CAUSE OF ACTION
(Registration Violations)**

61. Since at least 2007, MSRB Rule G-2 has provided that no broker, dealer, or municipal securities dealer shall effect any transaction in a municipal security unless they are qualified in accordance with the rules of the MSRB.

62. Since at least 2007, MSRB Rule G-3(b)(i) has defined a municipal securities principal as a person, other than a municipal securities sales principal, who is directly engaged in the management, direction, or supervision of certain areas of municipal securities business, including: underwriting, trading, or sales of municipal securities; research or investment advice regarding municipal securities; any other activities which involve communication, directly or indirectly, with public investors in municipal securities; and maintenance of certain municipal securities records.

63. Since at least 2007, MSRB Rule G-3(b)(ii)(A) has provided that: "Every municipal securities principal shall take and pass the Municipal Securities Principal Qualification Examination prior to being qualified as a municipal securities principal."

64. As detailed above, Pietkiewicz functioned as a municipal securities principal for GMCI, while he was not registered or qualified to act in that capacity, and GMCI, through [REDACTED], impermissibly permitted Pietkiewicz to act in that capacity, while he was not registered or qualified to do so.

65. As a result of the foregoing, GMCI violated MSRB Rules G-2 and G-3, and Pietkiewicz and [REDACTED] violated MSRB Rule G-3.

**FIFTH CAUSE OF ACTION
(Untimely Filing of Official Statements)**

66. As detailed above, between 2008 and May 31, 2009, GMCI acted as an underwriter in five primary offerings of municipal securities subject to Rule 15c2-12, in which it filed the final official statements and completed Form G-36(OS)s with the MSRB late.

67. As detailed above, in August 2009, GMCI acted as an underwriter in a primary offering of municipal securities subject to SEC Rule 15c2-12, in which it filed the official statement with EMMA late.

68. As a result of the foregoing, GMCI violated MSRB Rules G-32 and G-36.

Based on the foregoing, GMCI violated MSRB Rules G-2, G-3, G-17, G-27, G-30, G-32, and G-36; Grey violated MSRB Rules G-17 and G-30; Pietkiewicz violated MSRB Rules G-3 and G-27; and [REDACTED] violated MSRB Rule G-3.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondents from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that:

- GMCI be censured and be fined \$30,000;
- GMCI be liable for paying restitution to the customers listed on Attachment A hereto in the total amount of \$11,155.35, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of each transaction set forth in Attachment A, until the date this Offer is accepted by the NAC;

- Pietkiewicz be fined \$10,000 and be suspended from association with any FINRA member in a principal capacity for 45 days; and
- [REDACTED] be censured and be fined \$7,500.

Respondents agree to pay the monetary sanctions upon notice that this Offer has been accepted and that such payments are due and payable. Respondents each have submitted an Election of Payment form showing the method by which they propose to pay the fines imposed.

Restitution is ordered to be paid by GMCI for payment of such to the customers listed on Attachment A hereto in the total amount of \$11,155.35, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of each transaction set forth in Attachment A, until the date this Offer is accepted by the NAC.

A registered principal on behalf of GMCI shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Michael A. Gross, Esq., FINRA – Department of Enforcement, 2500 N. Military Trail, Suite 302, Boca Raton, FL, 33431-6324, either by letter that identifies GMCI and this case number or by e-mail from a work-related account of the registered principal of Respondent firm to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the Offer.

If for any reason GMCI cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the Offer is accepted, or such additional period agreed to by a FINRA staff member in writing, GMCI shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. GMCI shall provide satisfactory proof of such action to the FINRA staff member identified above and in the

manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Pietkiewicz understands that this settlement includes a finding that he failed to supervise an individual who violated MSRB Rules G-17 and G-30 and that under Article III, Section 4 of FINRA's By-Laws, this makes Pietkiewicz subject to a statutory disqualification with respect to association with a member.

GMCI understands that this settlement includes a finding that it failed to supervise an individual who violated MSRB Rules G-17 and G-30 and that under Article III, Section 4 of FINRA's By-Laws, this makes the firm subject to a statutory disqualification with respect to membership.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority


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