

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130352500-01**

**TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")**

**RE: Gates Capital Corporation, Respondent
BD No. 29582**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent, Gates Capital Corporation ("Gates Capital" or the "Firm"), submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The Firm hereby accepts and consents, without admitting or denying the findings, 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, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:**

BACKGROUND

Gates Capital has been a member of FINRA since March 25, 1992. The Firm, which is headquartered in New York, New York, has three branches and approximately 24 registered representatives. The Firm's business primarily involves the underwriting of municipal securities.

RELEVANT DISCIPLINARY HISTORY

In February 2012, Gates Capital entered into an AWC with FINRA through which the Firm consented to findings that it had violated MSRB Rule G-34 by failing to submit interest rate reset information for 1,532 Variable Rate Demand Obligations ("VRDOs") to the Short-term Obligation Rate Transparency System ("SHORT") within the time requirements prescribed by Rule G-34. The Firm was censured and fined \$10,000.

In June 2011, Gates Capital entered into an AWC with FINRA through which it consented to findings that it (1) failed to report the correct Time of Trade to the

Real-time Transaction Reporting System ("RTRS") in 64 reports of transactions in municipal securities, in violation of MSRB Rule G-14(b)(ii); (2) failed to report information regarding 144 purchase and sale transactions effected in municipal securities within 15 minutes of Time of Trade to an RTRS Portal, in violation of MSRB Rule G-14; (3) failed to show the correct time of execution on the memorandum of 59 transactions in municipal securities, in violation of MSRB Rule G-8; and (4) failed to establish a supervisory system reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and MSRB rules, concerning municipal securities transaction reporting, in violation of MSRB Rule G-27. The Firm was censured and fined \$17,500.

Gates Capital has no other relevant disciplinary history with the Securities and Exchange Commission, FINRA, any other self-regulatory organization or any state securities regulator.

OVERVIEW

This matter concerns Gates Capital's untimely submission of information concerning VRDOs to the MSRB, including the date and time when the interest rates for the VRDOs were reset, in violation of MSRB Rule G-34. In addition, the Firm submitted inaccurate information to the MSRB regarding the time at which the Firm determined the interest rate resets for VRDOs. Further, the Firm failed to maintain records regarding the interest rate reset times. By virtue of this misconduct, the Firm violated MSRB Rules G-8 and G-34. Further, the Firm's written supervisory procedures were not reasonably designed to ensure compliance with MSRB Rules, in violation of MSRB Rule G-27.

FACTS AND VIOLATIVE CONDUCT

1. MSRB Rule G-34 requires a remarketing agent, like Gates Capital, to submit certain information regarding a VRDO interest rate reset to the SHORT system by 6:30 p.m. Eastern Time on the date of the interest rate reset (except under circumstances that are not applicable here, when the interest rate reset occurs on a non-RTRS Business Day, as defined in MSRB Rule G-14).

During the period from May 2012 through September 2013 (the "Relevant Period"), the Firm made 137 untimely submissions to SHORT. Of those 137 untimely submissions:

- The Firm made 128 submissions to SHORT after 6:30 p.m. on the date of the interest rate reset; and
- The Firm made 9 submissions to SHORT at times ranging from one day to almost two months after the date when the interest rate reset was determined.

By reason of the foregoing, Gates Capital violated MSRB Rule G-34.

2. MSRB Rule G-34 requires a remarketing agent to report to SHORT, among other information, the actual time when an interest rate reset is determined. MSRB Rule G-8 separately establishes certain recordkeeping requirements for remarketing agents, including a requirement that remarketing agents maintain "all information and documents" required to be submitted to SHORT under Rule G-34.

For all of the 7,559 interest rate resets that were effected by the Firm during the Relevant Period, the Firm failed to report the time at which the Firm determined the interest rates and instead reported the time at which the Firm submitted the interest rate resets to SHORT. In addition, the Firm failed to maintain documentation reflecting the actual times at which the interest rate resets were determined for any of these interest rate resets.

By reason of the foregoing, Gates Capital violated MSRB Rules G-8 and G-34.

3. MSRB Rule G-27 requires a remarketing agent to maintain and enforce written supervisory procedures that are reasonably designed to ensure compliance with MSRB Rules.

Gates Capital's procedures in effect during the Relevant Period were not reasonably designed to ensure compliance with MSRB Rules because they failed to state the time by which interest rate resets must be reported to SHORT and also did not specify that the actual time of the interest rate reset must be reported to SHORT.

By reason of the foregoing, the Firm violated MSRB Rule G-27.

B. The Respondent also consents to the imposition of the following sanctions:

- A censure; and
- A fine in the amount of \$25,000 (all of which pertains to violations of the MSRB Rules).

Gates Capital agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Gates Capital has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Gates Capital specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this

matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Gates Capital specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Gates Capital specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Gates Capital further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Gates Capital understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Gates Capital; and**
- C. If accepted:**
- 1. this AWC will become part of Gates Capital's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;**
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm's disciplinary record;**
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and**
 - 4. Gates Capital may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Gates Capital may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.**
- D. Gates Capital may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Gates Capital understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.**

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

10/24/2014
Date (mm/dd/yyyy)

Gates Capital Corporation, Respondent
BD No. 29582

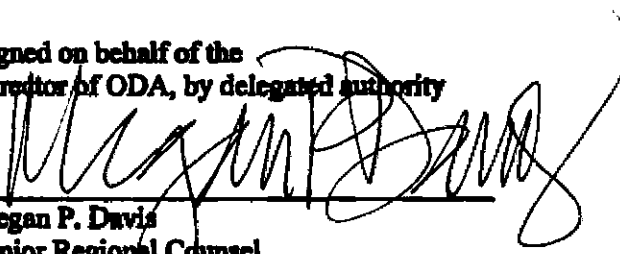
By: 
[Name and Title]

YOUNGWHI KIM
C C O

Accepted by FINRA:

November 17, 2014
Date

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


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