

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035375901**

RECEIVED
DEC 10 2015
FINRA District 4

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

RE: George K. Baum & Company, Respondent
Member Firm
CRD No. 36354

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent George K. Baum & Company ("GKB" 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 GKB alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. GKB 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

GKB became a FINRA member on April 25, 1994, and is headquartered in Kansas City, Missouri. GKB employs 141 registered persons at 29 branch offices. The Firm engages in a general securities business.

RELEVANT DISCIPLINARY HISTORY

On June 18, 2015, the U.S. Securities and Exchange Commission (the "Commission") issued an Order in Admin. Proceeding No. 3-16618, which found that GKB willfully violated Section 17(a)(2) of the Securities Act of 1933.¹ The Order was issued in connection with GKB's voluntary participation in the

¹ Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See *Aaron v. SEC*, 446 U.S. 680, 696-97 (1980).

Commission's Municipalities Continuing Disclosure Cooperation Initiative ("MCDC Initiative"), which involved a number of underwriters of municipal securities. The Order stated that GKB, a registered broker-dealer, conducted inadequate due diligence in certain offerings and, as a result, failed to form a reasonable basis for believing the truthfulness of certain material representations in official statements issued in connection with those offerings. As a result of such conduct, GKB was found to have willfully violated Section 17(a)(2) of the Securities Act. The violations discussed in the Order were self-reported by GKB to the Commission pursuant to the MCDC Initiative. GKB neither admitted nor denied the Commission's findings in Order No. 3-16618.

OVERVIEW

In February 2011, GKB charged a public school district customer (the "School District"), an underwriting fee of over four times the typical underwriting fee in connection with the issuance of \$9.67 million in general obligation bonds. Specifically, GKB charged the School District \$43 per \$1,000 of bonds issued, for a total underwriting fee of \$416,173.59. The underwriting fee GKB charged was inappropriate given the underwriting work performed by GKB. As such, GKB's conduct violated MSRB Rule G-17.

FACTS AND VIOLATIVE CONDUCT

The School District Engages GKB

Beginning in December 2007, GKB began working with the School District to assist in obtaining voter approval for a proposed bond issue of \$65 million and, if successful, to then underwrite the approved bonds. After an unsuccessful bond election in November 2008, GKB responded to a Request for Qualifications ("RFQ") from the School District related to the proposed bond offering in June 2009. Among other things, GKB's response to the RFQ quoted a sliding scale for its underwriting fees, with a fee of .79% of the par value of the bond offering (or \$7.90 per \$1,000 of bonds issued) for a bond issuance of \$10 million or less. GKB also represented in its RFQ response that the Firm did not charge separate fees for election support and public policy services; rather, if the bond election was successful and GKB underwrote the bonds, all of GKB's work would be covered by the quoted underwriting fee.

In 2010, after two failed district-wide bond elections, the School District applied for a grant from a State program for school financing (the "State Program"). Later in 2010, the State Program agreed to "match" funds raised by the School District if a bond issuance was approved in a November 2010 district-wide election. In the November 2010 election, voters approved the issuance of \$31,705,000 in debt by the School District.

Because the State Program required the School District to transfer \$22,035,000 of

the voter authorized debt to the State, the School District was left with only \$9.67 million in bonds to issue.

GKB Underwrites the School District's \$9.67 Million Bond Offering

After the 2010 election, in February 2011, the School District selected GKB to underwrite \$9.67 million in bonds issued by the School District (the "2011 Offering"). In connection with the 2011 Offering, GKB charged the School District an underwriting fee of \$43 per \$1,000 of bonds issued, or \$416,173.59.

In December 2010, in anticipation of, and prior to, the 2011 Offering, GKB provided the superintendent of the School District with a memorandum for her to "use in explaining the underwriting fee to [her] board of education" (the "December Memo") for GKB's proposed fee. In the December Memo, GKB acknowledged that the typical fee for the 2011 Offering would range from \$7 to \$9 per \$1,000 of bonds issued. Because the underwriting fee proposed by GKB was significantly higher than the typical fee, GKB attempted in the December Memo to justify its proposed fee of \$43 per \$1,000 of bonds issued.

First, GKB claimed the proposed higher underwriting fee was appropriate because the Firm originally believed it would be underwriting \$64 million in bonds for the School District. In particular, GKB cited to services provided by the Firm in connection with the failed bond elections in 2008 and 2009 relating to the proposed \$65 million bond offering, despite having acknowledged in the June 2009 RFQ that compensation for such services would be recovered as part of the Firm's underwriting fee only if the elections were successful. The Firm's initial belief as to the size of the proposed bond offering and the services provided in connection with the failed elections was not an appropriate consideration in GKB's determination of its underwriting fee because it had no reasonable relationship to the actual underwriting by GKB in the 2011 Offering.

In the December Memo, GKB further attempted to justify its proposed underwriting fee by taking credit for the total funding package of approximately \$64 million available to the School District, although the School District obtained most of the needed funding through the State Program and GKB had no involvement in the School District's application for or award of State Program funds. GKB also took credit for the successful 2010 bond election, though the success of that election was, in part, due to the School District's participation in the State Program which allowed it to seek issuance of approximately half the amount of debt sought in previous elections.

Finally, in the December Memo, GKB claimed that its proposed underwriting fee was appropriate because the Firm had been limited to serving as a co-manager on the State Program financing by the State. According to GKB, if it had been appointed a senior manager for the financing of the State Program, GKB would have received greater compensation in the form of a management fee and a higher

percentage of the sales commissions for all State Program financing. GKB's status in the State Program, however, was not related to the School District's 2011 Offering, or to any effort expended by GKB in that offering.

The justifications provided by GKB in the December Memo for the higher underwriting fee were not appropriate given the facts and circumstances of the 2011 Offering and, therefore, did not justify the underwriting fee proposed by, and ultimately charged by, GKB.

GKB Violated MSRB Rule G-17

MSRB Rule G-17 requires municipal securities dealers and municipal advisors to deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice. In an Interpretive Notice dated August 2, 2012, the Municipal Securities Rulemaking Board ("MSRB") stated that the question of whether an underwriter's compensation for a new issue is excessive depends upon "the specific facts and circumstances of the offering" and "may be so disproportionate to the nature of the underwriting and related services performed as to constitute an unfair practice with regard to the issuer that it is a violation of Rule G-17."

GKB failed to deal fairly with School District because the Firm's fee was inappropriate given the facts and circumstances of the 2011 Offering. GKB's compensation was disproportionate to the nature of the underwriting and related services performed by GKB in connection with the 2011 Offering.

As a result of the foregoing conduct, GKB violated MSRB Rule G-17.

B. GKB also consents to the imposition of the following sanctions:

1. A censure;
2. A fine of \$100,000; and
3. Disgorgement of \$170,000.

GKB agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. GKB has submitted an Election of Payment form showing the method by which GKB proposes to pay the fine imposed.

Partial disgorgement of the underwriting fee received by GKB is ordered to be paid to FINRA in the amount of \$170,000, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from February 1, 2011 until the date this AWC is accepted by the NAC.

GKB specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against GKB;
- 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, GKB 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.

GKB 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

GKB 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 GKB; and

C. If accepted:

1. this AWC will become part of GKB's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against GKB;
2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. GKB 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. GKB 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 GKB'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. GKB may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. GKB 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.

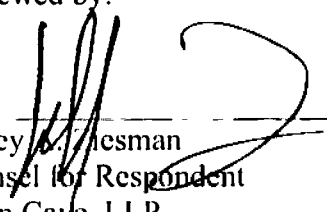
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that GKB has agreed to its provisions voluntarily; and that no offer, threat, 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.

Respondent George K. Baum & Company

12/7/2015
Date (mm/dd/yyyy)


By: Andrew F. Sears
Senior Vice President & General Counsel

Reviewed by:



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Accepted by FINRA:

12/15/2015
Date

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



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