

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016050811301**

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

RE: Gates Capital Corporation, Respondent
Registered Broker-Dealer
CRD No. 29582

John C. Fitzgerald, Respondent
Former Registered Representative
CRD No. 1529631

James D. Casey, Respondent
Registered Principal
CRD No. 500062

Youngwhi Kim, Respondent
Registered Principal
CRD No. 1394474

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Respondents Gates Capital Corporation (“Gates Capital” or the “firm”), John C. Fitzgerald, James D. Casey, and Youngwhi Kim (collectively, the “Respondents”) submit 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 Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, 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 FINRA member firm since 1992. The firm is also a registrant of the Municipal Securities Rulemaking Board (“MSRB”). The firm is headquartered in New York, New York, and has three branch offices and approximately 19 registered representatives. The firm’s primary business is the underwriting and secondary market trading of municipal securities. The firm also trades corporate equity and debt securities.

Fitzgerald entered the securities industry more than 40 years ago. As relevant here, Fitzgerald was registered as a municipal securities representative with Gates Capital from April 2013 to February 2018 and acted as underwriter and advisor for municipalities while registered with the firm. On February 16, 2018, Gates Capital filed a Form U5 terminating Fitzgerald’s registrations with the firm.

Casey entered the securities industry more than 40 years ago. As relevant here, Casey has been registered in various capacities with Gates Capital since March 1992.

Kim entered the securities industry more than 25 years ago. As relevant here, Kim has been registered in various capacities with Gates Capital since March 1992.

RELEVANT DISCIPLINARY HISTORY

In November 2014, without admitting or denying the findings, Gates Capital settled a FINRA matter and consented to findings that it had untimely submitted information concerning variable-rate demand obligations (“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 when the interest rate resets for VRDOs were determined and failed to maintain records regarding the interest rate reset times, in violation of MSRB Rules G-8 and G-34. Further, the firm’s WSPs were not reasonably designed to ensure compliance with MSRB Rules, in violation of MSRB Rule G-27. Gates Capital was censured and fined \$25,000.

In December 2004, without admitting or denying the findings, Gates Capital, Kim, and two other individual respondents settled a matter with FINRA’s predecessor, the National Association of Securities Dealers, Inc. (“NASD”), and consented to findings that Gates Capital, acting through the individual respondents, (1) permitted an individual to engage in municipal securities activities without proper qualifications, and (2) failed to create a blotter reflecting 26 equity transactions effected at the firm in violation of MSRB Rules G-2 and G-3, NASD Rules 3110 and 2110, and SEC Rule 17a-3. The firm and the individual respondents were jointly and severally fined \$12,500.

In August 1996, without admitting or denying the findings, Gates Capital and Kim settled a NASD matter and consented to findings that Gates Capital, acting through Kim, failed to file a Form G-37 in violation of MSRB Rule G-37. The firm and Kim were fined \$1,000 jointly and severally.

Casey and Fitzgerald have no relevant disciplinary histories.

OVERVIEW

Between April 2013 and May 2015, Respondent Gates Capital failed to make timely disclosure of its role as underwriter in connection with certain municipal bond transactions. In one such transaction, Respondent Fitzgerald switched roles from financial advisor to underwriter, and both the firm and Fitzgerald's immediate supervisor, Respondent Casey, failed to reasonably supervise Fitzgerald.

During the same period, Fitzgerald also conducted his securities activities using an outside email account that was neither reviewed nor retained by Gates Capital, a practice known to both Casey and Respondent Kim, who was responsible for the firm's books and records and for reviewing Fitzgerald's emails. Gates Capital and Kim also did not maintain and preserve records relating to Fitzgerald's business expenses incurred in connection with his municipal securities activities, including expenses related to entertainment or other gratuities provided to employees or agents of municipal issuers. In addition, Fitzgerald allowed an unregistered family member to work on municipal securities transactions without supervision by any firm principal—a situation known to Casey—and without the firm determining whether the family member was an associated person of the firm or needed to be registered with the firm.

Finally, between December 2013 and July 2015, the firm facilitated at least 21 cross trades that suggested another broker-dealer might be engaged in interpositioning. The firm's then-current WSPs required principal review for such issues but did not reasonably state how the principal should conduct such reviews and the firm failed to reasonably review these cross trades. In addition, the firm's WSPs were deficient because they failed to adequately set forth the steps to be taken by the firm in conducting fair pricing reviews for municipal securities.

Based on this conduct, Respondent Gates Capital violated MSRB Rules G-8, G-9, G-17, and G-27; Respondent Fitzgerald willfully violated MSRB Rules G-17 and G-23; Respondent Casey violated MSRB Rule G-27; and Respondent Kim violated MSRB Rules G-8, G-9, and G-27.

FACTS AND VIOLATIVE CONDUCT

The City's 2014 Municipal Bond Offering

MSRB Rule G-23(d) prohibits municipal securities dealers that act as financial advisors on an issuance of municipal securities from: (i) acquiring as principal either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from the issuer all or any portion of such issue; or (ii) acting as agent for the issuer in arranging the placement of such issue. This AWC refers to both these activities as “underwritings” performed by “underwriters.”

Rule G-23 is designed to minimize the prima facie conflict of interest that exists when a municipal securities professional acts as both a financial advisor and an underwriter with respect to the same issue.¹ The primary role of an underwriter is to purchase or arrange for the placement of securities in an arm's-length commercial transaction between the issuer and the underwriter.² In a financial advisory relationship, however, both the issuer and the financial advisor have a mutually beneficial interest in the issuance of securities.

MSRB Rule G-23(b) provides that, among other things, a financial advisory relationship is deemed to exist for purposes of Rule G-23 when a dealer renders financial advice to an issuer or enters into an agreement with an issuer to provide financial advisory services. “Advice” is construed broadly and “includes, without limitation, a ‘recommendation’ that is particularized to the specific needs, objectives, or circumstances of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues[.]”³

Although MSRB Rule G-23(c) requires a financial advisory relationship to be evidenced by a writing, a financial advisory relationship will be deemed to exist whenever a dealer renders the types of advice provided for in Rule G-23(b), regardless of the existence of a written agreement.⁴ However, a dealer that clearly identifies itself in writing as an underwriter and not as a financial advisor from the earliest stages of its relationship with the issuer with respect to that issue will be

¹ MSRB Rule G-23 Interpretive Guidance, “Issuer consent: financial advisor participation in underwriting – April 10, 1984.”

² MSRB Rule G-23 Interpretive Guidance, “Guidance on the Prohibition on Underwriting Issues of Municipal Securities for which a Financial Advisory Relationship Exists Under Rule G-23 – November 27, 2011.”

³ See Registration of Municipal Advisors, Exchange Act Release No. 34-70462 (September 20, 2013), 78 FR 67467, at 67479 (November 12, 2013).

⁴ MSRB Rule G-23 Interpretive Guidance, “Guidance on the Prohibition on Underwriting Issues of Municipal Securities for which a Financial Advisory Relationship Exists Under Rule G-23 – November 27, 2011.

considered to be “acting as an underwriter” under Rule G-23(b) with respect to that issue.⁵ Consistent with MSRB Rule G-17, the writing (commonly referred to as a “G-17 letter”) must make clear that the relationship between the underwriter and issuer is an arm’s-length commercial transaction and that the underwriter has financial and other interests that differ from those of the issuer.⁶ The writing must also make clear that, unlike a municipal advisor, an underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the issuer with regard to its own financial or other interests.⁷

MSRB Rule G-27(a) and (b) requires firms, among other things, to establish and maintain a system to supervise the municipal securities activities of each registered representative and associated person of the firm that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable MSRB rules.

On January 9, 2014, Gates Capital underwrote a \$2.185 million bond offering for a California municipality (the “city”). Fitzgerald through his firm, Fitzgerald Public Finance (“FPF”), a division of Gates Capital, was the lead banker for the offering, which was a refinancing of outstanding bonds that the city had previously issued in 2003. Fitzgerald had also been the lead banker on the 2003 issuance while he was registered at another broker-dealer.

In late March or early April 2013, the assistant city manager for the city contacted Fitzgerald and asked him to analyze the city’s outstanding bonds and to advise the city regarding potential refinancing options that might generate immediate cash savings to be used to hire additional police officers for the city in the short term. In response, Fitzgerald identified three outstanding bonds for potential refinancing and proposed three VRDO refinancing options. One of the options Fitzgerald proposed was to refinance the city’s 2003 offering. Fitzgerald estimated both the costs (including principal, interest, and other associated costs and fees) and the savings the city could expect to realize under each of the three proposals.

City managers then asked Fitzgerald to explore further the option of refinancing the 2003 issuance. In response, Fitzgerald prepared and presented two VRDO options for refinancing the 2003 issuance. He then met with the city managers in June 2013 to discuss the city’s specific funding needs and the proposed refinancing options. After the discussion, the city manager selected one of Fitzgerald’s proposed options and asked him to proceed with the refinancing in accordance with the goal of generating cash to hire additional police. Casey, who was Fitzgerald’s supervisor, did not review the proposals or the associated cash

⁵ *Id.*

⁶ *Id.*

⁷ MSRB Rule G-17 Interpretive Notice, “Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities – August 2, 2012.”

flows, savings schedules, and interest-rate assumptions before Fitzgerald presented them to the city and, as a general matter, only sometimes reviewed such finance options and savings schedules before Fitzgerald proposed them to municipalities.

After the June 2013 meeting, Fitzgerald continued to provide the city with financial advice and services including: assembling a finance team; creating and distributing financing schedules; making a presentation about the refinance to the city council in August 2013; and advising the city regarding a letter of credit and the attributes of a VRDO refinancing. Minutes from the August city council meeting referred to Fitzgerald as “Financial Advisor” and noted that he “addressed the current debt refunding.” Casey understood that the firm’s and Fitzgerald’s role in any particular issue could be specified either formally in an engagement letter or informally in the meeting minutes of a city council meeting but Casey did not review the meeting minutes for the August 2013 city council meeting.⁸

By letter dated August 14, 2013, the city engaged FPF to serve as a “financing team member” and “placement agent” in connection with the refinancing. The engagement was reflected in a letter that stated that FPF would “work closely with [the city manager], the City and bond Counsel to structure the proposed financing” and that “the full professional resources of FPF and Gates Capital Corporation will be available to assist ... [the city manager] and the City in this matter.” The letter was written on FPF letterhead which identified FPF as a “Financial Advisor or Underwriter to Local Governments.” Additional documents from this approximate period created by the city and other financing team members refer to FPF and Gates Capital as “underwriter,” but neither the August 14, 2013 letter nor the additional documents provided the information regarding the nature of the relationship between the city (as issuer) and FPF and Gates Capital (as underwriter), as required by MSRB Rule G-17.

In late September 2013, the city manager and the city’s finance director contacted Fitzgerald to raise questions about using a VRDO structure. Thereafter, Fitzgerald emailed Casey and another banker at Gates Capital and explained that the city manager wanted Fitzgerald to provide arguments to help convince members of the city council and city residents to proceed with the VRDO transaction which Fitzgerald had recommended. The next day, Fitzgerald emailed the finance director and city manager and wrote that the VRDO he had proposed would generate present value savings and was “in the best interest of the City.”

On December 18, 2013, Gates Capital sent its original G-17 letter to the city, stating that Gates Capital and Fitzgerald “intend[] to serve as underwriter and not as a financial advisor or municipal advisor” in connection with the refinancing.

⁸ Although Casey was responsible for supervising any financial advisory work Fitzgerald did while he was registered with Gates, Casey was unaware that Fitzgerald acted as a municipal advisor to two California municipalities pursuant to written advisory agreements. Fitzgerald had no such agreement with the city.

The G-17 letter also provided additional disclosures concerning the arm's-length nature of the underwriter-issuer relationship, as required by MSRB Rule G-17. These disclosures included notice that, "[u]nlike a municipal advisor, the Underwriter does not have a fiduciary duty to the [city] under the federal securities laws and, therefore, is not required to act in the best interest of the [city] without regard to its own financial or other interests." On January 8, 2014, only 21 days after the provision of the G-17 letter to the city, the bond refinancing closed.

Consistent with the requirements of MSRB Rules G-23 and G-17, Gates Capital's WSPs required that it make Rule G-17 disclosures in "the earliest stages of the underwriter's relationship with the issuer with respect to an issue" to provide the issuer with "clarity throughout all substantive stages of a financing regarding the roles of its professionals; (2) [awareness] of conflicts of interest promptly after they arise and well before the issuer effectively becomes fully committed (either formally or due to having already expended substantial time and effort) to completing the transaction with the underwriter; and (3) [] information required to be disclosed with sufficient time to take such information into consideration before making certain key decisions on the financing."

In addition to the circumstances concerning the city's 2014 issuance described above, on eight other occasions between 2013 and 2015, Gates Capital served as an underwriter in unrelated municipal bond offerings in which it did not timely provide the issuers with a G-17 letter. In those instances, the G-17 letters were provided between two and 15 days prior to the closing date.

Starting in late March or early April 2013, Fitzgerald provided detailed financial advice to the city and made recommendations with respect to the structure, timing, terms, and other matters of the various VRDO refinance options he had proposed. Fitzgerald's advice and recommendations were individually tailored for and applicable only to the city. Fitzgerald provided financial advice for months—including advising the city manager and finance director that the VRDO refinance Fitzgerald recommended was "in the best interest of the City"—before the city received the required disclosures regarding the underwriter-issuer relationship in December 2013. Casey did not review the refinance proposals or associated cash flows, savings schedules, and interest-rate assumptions before Fitzgerald presented them to the city. Casey did not review the city council minutes even though he believed such minutes could constitute the engagement agreement and specify Fitzgerald and Gates Capital's role in the refinance. As a result, Fitzgerald willfully violated MSRB Rule G-23 and Gates Capital and Casey failed to reasonably supervise Fitzgerald's municipal securities activities in violation of MSRB Rule G-27.

With respect to the city's 2014 bond issue and eight other issues, Gates Capital also failed to provide G-17 disclosures in the earliest stage of the relationship as

required by MSRB rules and the firm's WSPs. As a result of the foregoing conduct, the firm violated MSRB Rules G-17 and G-27.

Fitzgerald's Use of an Outside Email Account

MSRB Rule G-17 requires that, "[i]n the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice."

MSRB Rule G-27(e) requires a firm principal to review the correspondence, including email, of its municipal securities representatives with the public relating to the municipal securities activities of the firm. MSRB Rule G-9(b)(viii)(C) requires that municipal securities dealers maintain all written and email communications relating to the conduct of its municipal securities business.

Consistent with these regulatory requirements, at all times relevant to this AWC the firm's WSPs required its registered representatives to conduct their business-related email correspondence through a firm-issued email address so that those communications could be subjected to supervisory review and retained by the firm. According to the firm's procedures, Kim was responsible for ensuring compliance with these provisions.

From April 2013 through April 2016 (the "email review period"), Fitzgerald used an outside email account, which was not hosted or captured by the firm's email servers, to conduct his municipal securities business. Casey and Kim were both aware of Fitzgerald's use of the outside email, and repeatedly instructed him to use his Gates Capital email to conduct his municipal securities business so that his communications could be reviewed and retained in accordance with firm policy and regulatory requirements. However, Fitzgerald continued to use his outside email address, and Casey and Kim did not sufficiently respond to evidence that he was doing so or otherwise sufficiently address this ongoing violation of firm policy. For example, Fitzgerald listed his outside email address as his contact information on finance team distribution lists, including the distribution list for the city's 2014 refinance. Casey, and to a lesser extent Kim, also received numerous emails throughout the email review period on which Fitzgerald's outside email address was listed.

As a consequence, Fitzgerald's business-related email communications for the email review period were neither reviewed nor retained by the firm. Additionally, all of Fitzgerald's email pre-dating January 8, 2015 was at some point deleted from his outside email account. The firm, Casey, and Kim were unaware of this deletion until FINRA staff requested Fitzgerald's emails in connection with its investigation of the city's 2014 refinance.

As a result of the foregoing conduct, Fitzgerald willfully violated MSRB Rule G-17; Gates Capital, Kim, and Casey violated MSRB Rule G-27; and Gates Capital and Kim violated MSRB Rules G-8 and G-9.

Fitzgerald's Son Assisted Fitzgerald with Municipal Securities Activities

The Exchange Act and other relevant rules and regulations impose registration and qualification requirements on individuals based on their securities-related activities. Subject to certain exceptions, individuals who work for a registered broker-dealer or municipal advisor are "associated persons" who must be properly supervised by the registered entity. This is the case whether such individuals are employees or independent contractors. Although associated persons usually do not have to register separately with the SEC, they may have to register with the self-regulatory organizations of which their employer is a member.

Fitzgerald engaged his son to assist in modeling cash flow and deal sizing analyses in certain municipal offerings for which Fitzgerald served as an investment banker, including the city's 2014 bond issuance. Fitzgerald used the analyses prepared by his son when making proposals to issuers, including in the VRDO proposals he provided to the city. However, Fitzgerald's son was not registered with Gates Capital (or any FINRA member firm), nor was he a formal employee or contractor of the firm. As such, his work in connection with Fitzgerald's municipal securities business was not supervised by Casey or any other firm principal.

Casey was aware that Fitzgerald's son had assisted Fitzgerald with such modeling prior to Fitzgerald joining the firm, and Casey was copied on emails relating to cash flow analyses for the city's 2014 refinance based on assumptions provided by Fitzgerald and his son. Furthermore, Fitzgerald's son was identified as the Vice President of FPF and a member of the finance team on the distribution list for the city's 2014 refinance, which Casey received. Neither Casey nor any other firm principal investigated the scope of the son's securities-related activities to determine whether the son was an associated person of Gates Capital who needed to be supervised by a firm principal or whether Fitzgerald's son should be registered to perform those activities. As a result of the foregoing, Gates Capital and Casey violated MSRB Rule G-27.

Fitzgerald's Municipal Securities Business-Related Expenses

From time to time, Fitzgerald incurred business expenses related to his municipal securities activities, including the provision of entertainment or other gratuities to employees or agents of municipal issuers to whom he provided service or sought to provide service. Neither Casey nor the firm required Fitzgerald to provide the firm with records relating to the expenses he incurred in connection with his business activities on behalf of the firm. Consequently, Fitzgerald's business expenses were wholly unsupervised. For example, in July 2013, while advising

the city regarding the bond refinance, Fitzgerald provided a personal check to the law firm which acted as the city's attorney in the 2014 bond issuance to reimburse the law firm for Fitzgerald's portion of a dinner at a trade association conference that Fitzgerald and the law firm had co-sponsored. Neither Casey nor any other firm principal was aware of Fitzgerald's payment to the city's attorney. On other occasions, Fitzgerald provided gifts in the form of meals for city officials. Casey and the firm were generally unaware of Fitzgerald's expenditures in connection with these meals and the firm neither reviewed nor kept any related records.

MSRB Rule G-20 protects against improprieties and conflicts of interest that may arise when regulated entities or their associated persons give gifts or gratuities in relation to the municipal securities activities of the recipients' employers. MSRB Rule G-20(g) prohibits brokers, dealers, and municipal securities dealers and their associated persons from, among other things, making direct or indirect payments of any non-cash compensation with certain exceptions. Rule G-20(b)(ii) provides one such exception and permits occasional gifts of meals and entertainment within normal business dealings. MSRB G-8(a)(xvii) requires firms to maintain records of all non-cash compensation referred to in MSRB Rule G-20(g). MSRB Rule G-9(a)(ix) requires firms preserve the records required to be maintained by Rule G-8(a)(xvii). MSRB Rule G-9(b)(viii) requires firms to preserve, among other records, check books, bank statements, cancelled checks, and cash reconciliations relating to its business. Kim was responsible for the firm's compliance with the books and records provisions and Casey was responsible for supervising Fitzgerald's compliance.

Gates Capital and Kim did not maintain and preserve records relating to Fitzgerald's payments or gifts related to his municipal securities activities. The firm and Casey failed to reasonably supervise the payments and gifts Fitzgerald made relating to his municipal securities activities. As a result of the foregoing conduct, Gates Capital, Casey, and Kim violated MSRB Rule G-27; and Gates Capital and Kim violated MSRB Rules G-8 and G-9.

Cross Trades of Municipal Securities in the Secondary Market

In addition to the supervisory system requirements of MSRB Rule G-27(a) and (b) noted above, MSRB Rule G-27(c) requires firms to adopt, maintain, and enforce WSPs reasonably designed to ensure that the conduct of the municipal securities activities of the firm and its associated persons are in compliance with applicable securities laws, regulations, and rules. The WSPs must codify the firm's supervisory system and, at a minimum, establish procedures that state how a designated principal shall monitor the firm's and its associated persons' municipal securities activities.

From December 2013 through July 2015, the firm facilitated at least 21 cross trades in municipal securities for customers of another broker-dealer which presented indications that the other broker-dealer may have been engaged in

interpositioning. During that period, the firm's WSPs required a firm principal to review municipal securities transactions for potential manipulation; however, the firm's WSPs did not reasonably specify how or when such reviews were to be conducted, and the firm failed to reasonably conduct the required supervisory reviews for these 21 cross trades. In addition, the firm's WSPs were deficient because they failed to adequately set forth the steps to be taken by the firm in conducting fair pricing reviews for municipal securities.⁹ As a result of the foregoing conduct, Gates Capital violated MSRB Rule G-27.

B. The Respondents also consent to the imposition of the following sanctions:

- Gates Capital – Censure, \$125,000 fine, and an undertaking to hire an independent consultant, as described below;
- Fitzgerald – Suspension in all-capacities for 18-months and \$10,000 fine;
- Casey – Suspension in all principal capacities for six-months and \$5,000 fine;
- Kim – Suspension in in all principal capacities with the exception of any activities requiring a Series 27 license for four-months and \$5,000 fine.

Respondents Gates Capital, Casey, and Kim each agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. They have each submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

Respondent Fitzgerald's fine shall be due and payable either immediately upon his reassociation with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

The Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Respondent Fitzgerald understands that if he is barred or suspended from associating with any FINRA member, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, he may not be associated with any FINRA member in any capacity,

⁹ These WSP deficiencies were discovered in connection with a review conducted by FINRA's Department of Market Regulation fixed income group of 18 cross trades in municipal securities executed by the firm between October 2011 and April 2013.

including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

Respondents Casey and Kim each understand that if he is barred or suspended from associating with any FINRA member in a principal capacity, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, Respondent Casey may not be associated with any FINRA member in a principal capacity during the period of his suspension and Respondent Kim may not be associated with any FINRA member in a principal capacity with the exception of any activities requiring a Series 27 license during the period of his suspension (see FINRA Rules 8310 and 8311). Furthermore, because he is subject to a statutory disqualification during the suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

Respondent Fitzgerald understands that this settlement includes a finding that he willfully violated MSRB Rules G-17 and G-23 and that under Article III, Section 4 of FINRA's By-Laws, this makes him subject to a statutory disqualification with respect to association with a member.

Respondents Casey and Kim understand that this settlement includes a finding that they failed to supervise an individual who violated MSRB Rules G-17 and G-23 and that under Article III, Section 4 of FINRA's By-Laws, this makes them subject to a statutory disqualification with respect to association with a member.

Respondent Gates Capital understands that this settlement includes a finding that it failed to supervise an individual who violated MSRB Rules G-17 and G-23 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.

Respondent Gates Capital shall:

- a. Retain, within 60 days of the date of the Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the firm's policies, systems, and procedures related to the findings of rule violations described above.
- b. The Independent Consultant, any firm with which the Independent Consultant is affiliated or of which he or she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties, shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, any of the Respondents during the two years prior to the date of the Notice of Acceptance of this AWC.

- c. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.
- d. Cooperate with the Independent Consultant in all respects, including by providing staff support. Gates Capital shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Gates Capital shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; Gates Capital shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA.
- e. Require the Independent Consultant, at the conclusion of the review, which shall be no more than 120 days after the date of the Notice of Acceptance of this AWC, to submit to the firm and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of the firm's policies, systems, procedures, and training relating to the findings of rule violations described above; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the firm's policies, systems, procedures and training.
- f. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with Gates Capital, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated or of which he or she is a member, and any person engaged to assist the Independent Consultant in performing his or her duties pursuant to this AWC, shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Gates Capital or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- g. Within 60 days after delivery of the Written Report, Gates Capital shall adopt and implement the recommendations of the Independent Consultant

or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the firm with a written decision reflecting his or her determination. The firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

- h. Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), Gates Capital shall provide FINRA staff with a written implementation report, certified by an officer of Gates Capital, attesting to, containing documentation of, and setting forth the details of the firm's implementation of the Independent Consultant's recommendations.
- i. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against them;
- 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, Respondents specifically and voluntarily waive 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.

Respondents further specifically and voluntarily waive 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

Respondents understand 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 Respondents; and
- C. If accepted:

1. this AWC will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by FINRA or any other regulator against Respondents;
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. Respondents 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. Respondents 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 my: (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. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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.

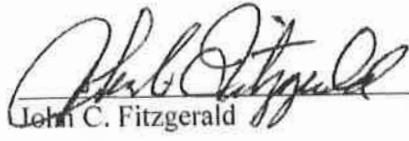
The undersigned Respondents and individual authorized to act on the firm's behalf certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that all Respondents have agreed to its provisions voluntarily; and that no 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 Respondents to submit it.

4/24/2018
Date (mm/dd/yyyy)

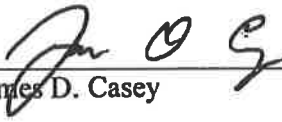
THOMAS C. SULGER-CEO
Gates Capital Corporation

By: TH C-A

4/18/2018
Date (mm/dd/yyyy)


John C. Fitzgerald

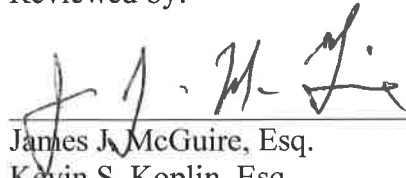
4-18-2018
Date (mm/dd/yyyy)


James D. Casey

4/17/18
Date (mm/dd/yyyy)

Y. Kim
Youngwhi Kim

Reviewed by:

A handwritten signature in black ink, appearing to read "J.J. McGuire", is written over a horizontal line.

James J. McGuire, Esq.

Kevin S. Koplin, Esq.

Counsel for Respondents

Barton LLP

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420 Lexington Avenue

New York, New York 10170

(212) 687-6262

Accepted by FINRA:

May 4, 2018
Date

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



Daniel L. Gardner
Senior Counsel
FINRA Department of Enforcement
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