

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017052424001**

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

RE: Ross Sinclair & Associates, LLC, Respondent
Broker-Dealer
CRD No. 25440

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Ross Sinclair & Associates, LLC ("Ross Sinclair" 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. Ross Sinclair 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

Ross Sinclair has been a FINRA member firm since November 1989, and has its main offices in Cincinnati, Ohio. As of March 2019, the Firm employed 62 registered individuals and operated out of nine branches. The Firm is a regional broker-dealer that performs municipal underwritings and other services primarily in the Midwest.

RELEVANT DISCIPLINARY HISTORY

The Firm has no relevant disciplinary history.

OVERVIEW

In March and April 2014, Ross Sinclair, as the exclusive placement agent for a private placement of notes, assisted with the preparation and circulation of a Confidential Information Memorandum ("CIM") to seven accredited investors for

notes, the proceeds of which the issuer was to provide to a film production company for the advance funding of anticipated state tax credits. The CIM disclosed that in addition to a 2% commission, Ross Sinclair would also earn a “certain percentage” of profits on the sale of tax credits but failed to disclose that it would earn half of those profits, a material fact that would have been important to investors. The CIM also failed to disclose that one of Ross Sinclair’s registered representatives was Vice President of the issuer. As a result, the Firm violated FINRA Rule 2010 by acting in contravention of Section 17(a)(2) of the Securities Act of 1933 (“Securities Act”).

Between December 15, 2015 and December 20, 2016, Ross Sinclair omitted material facts from the Private Placement Memorandum (“PPM”) for municipal bonds underwritten by the Firm to finance the construction of a community recreation center. Although the Firm verbally disclosed the loan agreement to investors, Ross Sinclair failed to disclose in the PPM: (i) that the issuer had threatened to default on an earlier series of bonds and bond anticipation notes (“BANs”)¹; (ii) that a loan agreement existed between the issuer and Ross Sinclair; and (iii) information about the finances of both the issuer and Ross Sinclair. All of this information should have been included in the PPM as it would have been material to investors in deciding whether to invest in the bonds. As a result, the Firm violated MSRB Rule G-17.

From June 8, 2016 to August 29, 2017, Ross Sinclair failed to establish, document, and maintain a written system of risk management controls and supervisory procedures relating to the Firm’s provision of direct market access to its traders, in violation of Section 15(c) of the Securities Exchange Act of 1934 and Exchange Act Rule 15c3-5(b) and (c) and MSRB Rule G-27. The Firm also failed to complete an annual certification that its risk management controls and supervisory procedures for direct market access complied with the provisions of Exchange Act Rule 15c3-5(e), in violation of that Rule. The Firm’s violations of Exchange Act Rule 15c3-5 also constitute violations of FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Failure to Disclose Material Facts in Connection with a Private Placement

Background

Prior to April 2014, Ross Sinclair had participated in several private placements of notes involving state tax credits for the production of films, which states typically do not pay until after the completion of the film. Tax credit financing companies are in the business of providing film production companies with

¹ Bond Anticipation Notes, or BANs, are commonly used by borrowers for construction projects where the issuer anticipates that it will receive funds from another source that will be available to pay down significant portions of an indebtedness. Thus, BANs will be used and rolled over until such alternate funds are received and then longer-term bonds may be employed to cover a reduced amount of borrowing.

advance funding of anticipated tax credits in order to help finance the production of films and the sale of film tax credits after the completion of a film. To raise the funds needed to provide advance funding, these companies issue notes to investors, which are repaid with interest after the tax credit company has obtained the film tax credits and then sold them to other film production companies or companies seeking film tax credits in the state issuing the credits.

In April 2014, Ross Sinclair entered into an agreement as the exclusive placement agent to raise \$3.5 million for a film tax credit finance company ("the Tax Credit Lender"), through a private placement of notes. The Tax Credit Lender had entered into an agreement with a film production company (the "Production Company") to loan the Production Company \$3 million in exchange for approximately \$4.9 million of state film tax credits that the Production Company anticipated receiving upon completion of a film it planned to make.²

Ross Sinclair, as the placement agent for the Tax Credit Lender's notes, raised \$3.5 million from seven accredited investors through this private placement of notes. The notes were exempt from registration with the SEC under Rule 506 of Regulation D of the Securities Act. In connection with the private placement, Ross Sinclair assisted with the preparation and circulation of the CIM, which outlined the details of the investment and the terms of the agreement between the Tax Credit Lender and the Production Company. The CIM provided that the investors' notes would be repaid, plus interest, upon the Tax Credit Lender's receipt and sale of the anticipated film tax credits.

Material Omissions in the CIM

FINRA Rule 2010 requires that FINRA member firms observe high standards of commercial honor and just and equitable principles of trade. Section 17(a)(2) of the Securities Act provides that it shall be unlawful "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..." It is a violation of FINRA Rule 2010 to act in contravention of Section 17(a)(2) of the Securities Act.

The CIM stated that Ross Sinclair representatives would receive a commission of 2% on the notes sold, and "a certain percentage of the [Issuer's] revenues generated by the transactions with the [Production Company] and that all such fees would be payable out of the [Tax Credit Lender's] funds." The CIM did not disclose that Ross Sinclair would receive half of the revenues the Tax Credit Lender anticipated earning from the successful completion of the transaction. Ultimately, the Film Production Company did not complete the film and Ross

² The Tax Credit Lender retained approximately \$500,000 (of the \$3.5 million raised by Ross Sinclair) as an advance on the executive producer fee that the Tax Credit Lender anticipated receiving. Those funds were returned to investors in December 2016 after the Film Production Company failed to complete the film.

Sinclair did not receive any compensation from the Tax Credit Lender's anticipated revenue.

The CIM also failed to disclose that a Ross Sinclair registered representative agreed to become Vice President of the Tax Credit Lender to facilitate certain aspects of the transaction.

These omissions were material because in addition to being the exclusive placement agent, Ross Sinclair had both a business relationship with the Tax Credit Lender and a compensation arrangement with the Tax Credit Lender for a "certain percentage" of the Tax Credit Lender's profits on the sale of the film tax credits. This information would have been considered material to reasonable investors because it would have allowed them to identify potential conflicts of interest that may have altered their investment decisions. As a result of the foregoing conduct, Ross Sinclair violated FINRA Rule 2010 by acting in contravention of Section 17(a)(2) of the Securities Act.

Failure to Disclose Material Facts in Connection with a Municipal Offering

Background

Beginning in 2001, Ross Sinclair provided underwriting services to a particular county (the "County") related to the construction of a recreation center (the "Recreation Center"). In 2001, the County approved the issuance of approximately \$4.5 million in BANs to construct a multi-purpose recreation center (the "Series 2001 BANs"). The Recreation Center, constructed in May 2002, contained a swimming pool, a gymnasium, a cardio-vascular/weight training room, a walking track and other similar amenities. The Series 2001 BANs were issued with maturity dates scheduled for two to three years after issuance. The Recreation Center was unable to pay the full amount of principal and interest due on the Series 2001 BANs because it did not receive certain alternative funding by the maturity date of the BANs. The Recreation Center repeatedly rolled the indebtedness over with the issuance of new BANs. Between 2001 and 2015, the Recreation Center BANs were refunded several times, which culminated in a 2010 bond issue (the "Series 2010 Bonds"), with Ross Sinclair serving as underwriter for each refunding.

In the fall of 2015, Ross Sinclair scheduled a meeting with the Recreation Center to discuss refinancing the Series 2010 Bonds. Ross Sinclair was informed that the Recreation Center could not pay the interest and principal on the 2010 Series Bonds by the dates of maturity. Ross Sinclair recommended that the Recreation Center refund the 2010 Series Bonds by issuing a new set of bonds by the end of 2015. During that meeting, the Recreation Center stated that it intended to default on the 2010 Series Bonds unless it obtained alternative financing.

Ross Sinclair sought to avoid this threatened default, which the Firm believed

would have been harmful to its customers and the Firm's reputation. To persuade the Recreation Center to issue a new set of bonds rather than default, Ross Sinclair agreed to pay a substantial portion of the principal and interest that would be due on the new bonds under the conditions specified below, and to purchase all of the new bonds upon maturity.

The Series 2015 Bonds

On December 14, 2015, Ross Sinclair entered into a loan agreement with the Recreation Center. Under the agreement, the Recreation Center was responsible for a portion of the interest payments and a lump sum payment of \$1,000,000, upon the maturity of the Series 2015 Bonds. If the Recreation Center made timely payments, the Firm would pay the remaining interest and principal owed to the bondholders.

On December 16, 2015, the Firm completed an underwriting for the Series 2015 Bonds, which paid off the existing 2010 Series Bonds. Ross Sinclair structured the issuance with a PPM and an Investor Acknowledgement Letter, which required purchasers to certify that they had undertaken sole responsibility for the investment and conducted an investigation of the financial condition of the Recreation Center (among other items).

At the end of February 2016, two registered representatives of Ross Sinclair sold a portion of the Series 2015 Bonds to four accredited investors. The Ross Sinclair registered representatives verbally informed their customers that the Firm had agreed to make the payments on the Series 2015 Bonds.

Material Omissions in the PPM

MSRB Rule G-17, which applies to municipal offerings such as the Recreation Center Bonds, requires municipal securities dealers to deal fairly with all persons and not engage in any deceptive, dishonest or unfair practice.

The PPM for the 2015 Series Bonds contained several material omissions, including: (i) the existence of the loan agreement between Ross Sinclair and the Recreation Center; (ii) the fact that the Recreation Center threatened to default on the 2010 Series Bonds, and (iii) relevant financial information pertaining to the Recreation Center or the Firm, which would have allowed investors to assess each entity's ability to make the promised payments on the 2015 Series Bonds.

The Firm requested that bond counsel omit disclosure of the loan agreement from the PPM, against bond counsel's advice. Ross Sinclair purchased the Series 2015 Bonds at par and sold the Bonds at par, and thus made no profits on the sales. Ross Sinclair also continued making interest payments on the Series 2015 Bonds, as required by the loan agreement. Accordingly, no Ross Sinclair customers experienced losses on the Series 2015 Bonds.

The omissions described above were material because the information would have allowed investors to better evaluate the risks associated with the 2015 Series Bonds offering, including that the Recreation Center could default or that Ross Sinclair might not be able to make good on its promised payments. As a result of these omissions, Ross Sinclair violated MSRB Rule G-1.7.

Failure to Supervise Direct Market Access Activities

Section 15(c) of the Exchange Act and Exchange Act Rule 15c3-5, among other things, requires broker-dealers with market access, or that provide customers or any other persons with access to an exchange or alternative trading system, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to systematically limit the financial exposure of the broker-dealer that could arise as a result of market access, and to ensure compliance with applicable regulatory requirements in connection with market access.

Exchange Act Rule 15c3-5(b) requires firms to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of permitting access to alternative trading systems ("ATS") sites. Exchange Act Rule 15c3-5(c)(1) further requires the risk management controls and supervisory procedures be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for the broker-dealer. In addition, Exchange Act Rule 15c3-5(e) requires that the broker-dealer review on at least an annual basis the effectiveness of such risk management controls and supervisory procedures and that each firm's CEO certify annually that the broker-dealer conducted the required review.

Ross Sinclair traders purchase bonds for the Firm's in-house inventory in order to respond to actual or anticipated customer demand. Firm traders also sell bonds on the ATS sites on a wholesale basis. In order to execute these transactions, Ross Sinclair's twelve traders have direct market access through three ATS sites.

Only Ross Sinclair traders purchase and sell fixed-income securities on the ATS sites. The Firm does not provide market access (including sponsored market access) to its customers, counterparties, or any other person or entity outside of Ross Sinclair.

From June 8, 2016 to August 29, 2017, each Ross Sinclair trader had an assigned trading limit approved by the Firm (i.e., a total amount of principal each trader could hold in their respective proprietary trading accounts). The Firm, however, did not impose hard stop trading limits on any of the Firm's trading accounts prior to submitting them to the ATS sites. Thus, even though the Ross Sinclair's traders had individual trading limits, the traders had the ability to exceed those

individual limits in bids placed on the ATS sites. Furthermore, the Firm failed to establish risk management controls and supervisory procedures to limit Ross Sinclair's financial exposure from permitting its traders to access ATS sites, such as establishing an aggregate trading limit for daily buys and sells.³

Accordingly, the Firm failed to establish and maintain written supervisory procedures reasonably designed to manage the risks related to providing traders with direct market access, as required by Rule 15c3-5(b). The Firm also failed to establish, document, and maintain a system of risk management controls and supervisory procedures designed to systematically limit the financial exposure of the broker or dealer that could arise as the result of market access, as well as ensure compliance with all regulatory requirements, as required by Rule 15c3-5(c). The Firm's violations of Section 15(c) of the Exchange Act, Rule 15c3-5(b) and (c) also constitute violations of MSRB Rule G-27.

Finally, in its 2016 annual CEO certification, Ross Sinclair failed to certify that its risk management controls and supervisory procedures complied with the provisions of SEC Rule 15c3-5, thus violating SEC Rule 15c3-5(e). The Firm's violations of Section 15(c) of the Exchange Act and Exchange Act Rule 15c3-5 also constitute violations of FINRA Rule 2010.

B. Ross Sinclair also consents to the imposition of the following sanctions:

1. A censure; and
2. A fine of \$200,000 (\$75,000 of which pertains to violations of MSRB Rules G-17 and G-27).

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

Ross Sinclair 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

Ross Sinclair specifically and voluntarily waives the following rights granted under FINRA's

³ The ATS sites established aggregate trading limits for the Firm, and had certain controls in place that prevented the entry of duplicative or erroneous orders.

Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the Firm;
- 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, Ross Sinclair specifically and voluntarily waives any right to claim bias or prejudice 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.

The Firm 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

Ross Sinclair 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 the Firm; and
- C. If accepted:
 - I. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Ross Sinclair;

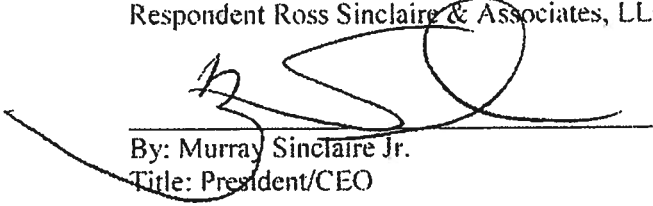
2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. Ross Sinclair may not take any action or make or 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. Ross Sinclair 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. Ross Sinclair may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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.

Respondent Ross Sinclair & Associates, LLC

06/10/2019
Date (mm/dd/yyyy)


By: Murray Sinclair Jr.
Title: President/CEO

Reviewed by:

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Accepted by FINRA:

6/10/19
Date

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

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