

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017055363301**

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

**RE: D.A. Davidson & Co., Respondent
Member Firm
CRD No. 199**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent D.A. Davidson & Co. 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent D.A. Davidson & Co. 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

D.A. Davidson & Co. has been a FINRA member firm since September 1952 and is headquartered in Great Falls, Montana. The firm's primary business units include wealth management, equity capital markets, and fixed income capital markets, and its business lines include commission-based brokerage services, asset management, and investment banking. D.A. Davidson provides underwriting services to municipal entities and has been a registered municipal dealer since 1975 and municipal advisor since 2010. The firm currently has approximately 1,000 registered representatives and approximately 120 branch offices.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have any relevant disciplinary history with the Securities Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

During March through October 2016 (the “relevant period”), D.A. Davidson violated MSRB Rule G-17 by providing inaccurate or misleading statements in its issue price certificates in connection with 22 municipal offerings. The firm also violated MSRB Rule G-27 by failing to establish and maintain a supervisory system and written supervisory procedures that were reasonably designed to ensure the accuracy of the representations the firm made to issuers in its issue price certificates.

FACTS AND VIOLATIVE CONDUCT

FINRA identified the violations below through a cause examination focusing on offerings that were originally reviewed during a 2017 cycle examination of D.A. Davidson.

Inaccurate Issue Price Certificates in Violation of MSRB Rule G-17

MSRB Rule G-17 states that municipal securities dealers “shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.” Through its interpretive guidance, the MSRB has stated that Rule G-17 encompasses two general principles. First, the rule imposes a duty to not engage in deceptive, dishonest, or unfair practices. The rule also contains a separate general duty to deal fairly, which encompasses an obligation to affirmatively disclose material facts.

During the relevant period, D.A. Davidson acted as the sole underwriter for numerous municipal offerings and, in its capacity as sole underwriter, prepared and provided issuers with issue price certificates in connection with the offerings. Issue price certificates typically include representations that, among other things, at least ten percent of each maturity of the bonds was first sold to the public at the initial offering prices set forth in the Official Statement for the offering.

In *Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities* (May 7, 2012) (“MSRB Notice 2012-25”), the MSRB stated:

All representations made by underwriters to issuers of municipal securities in connection with municipal securities underwritings, whether written or oral, must be truthful and accurate and must not misrepresent or omit material facts. Underwriters must have a reasonable basis for the representations and other material information contained in documents they prepare and must refrain from including representations or other information they know or should know is inaccurate or misleading. For example, in connection with a certificate signed by the underwriter that will be relied upon by the issuer or other relevant parties to an underwriting (e.g., an issue price certificate), the dealer must have a reasonable basis for the representations and other material information contained therein.

During the relevant period, D.A. Davidson executed issue price certificates in connection with 22 municipal offerings (out of a sample of 30 reviewed by FINRA) that included inaccurate or misleading statements regarding the percentage of each maturity that was sold, or was reasonably expected to be sold, to the public.¹ Issue price certificates for 17 offerings included the inaccurate representation that “at least 10% [was] sold to the public,” and issue price certificates for another five offerings made the inaccurate representation that “as of the sale date” the firm “reasonably expected that at least 10% would be sold to the public.” At the time the firm executed the issue price certificates for the 22 offerings, the offerings had been completed and, contrary to these representations, certain maturities of all 22 offerings had, in fact, been sold by D.A. Davidson entirely to other broker-dealers and not to the “public.”

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

Failure to Reasonably Supervise Creation of Issue Price Certificates in Violation of MSRB Rule G-27

MSRB Rule G-27(b) requires municipal dealers to establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations and MSRB Rules. MSRB Rule G-27(c) requires each municipal dealer to adopt, maintain, and enforce written supervisory procedures (“WSPs”) that are reasonably designed to ensure that the conduct of municipal securities activities is in compliance with MSRB Rules and the Securities Exchange Act of 1934.

During the relevant period, D.A. Davidson did not have a reasonable system in place to supervise the accuracy of the representations it made in issue price certificates. Specifically, the firm relied upon bankers and bond counsel to prepare and execute issue price certificates without any process or procedure for verifying the accuracy of the firm’s statements based on available information regarding whether at least 10% of each maturity had actually been sold to the public. Moreover, while the firm’s WSPs generally described the firm’s obligations with respect to its representations to issuers, the firm had no WSPs for reviewing the accuracy of issue price certificates.

As a result of the foregoing conduct, Respondent violated MSRB Rule G-27.

¹ Issuers of tax-exempt and tax-advantaged bonds generally are prohibited from investing bond proceeds in a manner that would result in investment yields that are materially higher than the bond issue. For purposes of these arbitrage investment restrictions, the yield on a bond issue is to be determined on the basis of issue price. During the relevant period, Section 1.148(b) of the Internal Revenue Code stated that, generally, the issue price of bonds was the first price at which a substantial amount of the bonds was sold, or reasonably expected to be sold, to the public—with ten percent being a substantial amount and the definition of public excluding broker-dealers and similar persons or organizations. In December 2016 (after the relevant period), the IRS issued new regulations effective for bond sales on or after June 7, 2017. In relevant part, these new regulations eliminated the ability to rely on reasonable expectations when determining issue price and expanded the definition of “public” to include, among others, broker-dealers with no contractual involvement in the initial sale of the bonds.

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

1. A censure;
2. A fine in the amount of \$85,000 (all of which pertains to the violations of MSRB Rules G-17 and G-27); and
3. An undertaking by which the firm, within 60 days of the date this AWC is issued, will provide to FINRA a plan for reviewing the securities detailed on Schedule A to identify and then provide notice to the issuers of inaccuracies in the issue price certificates. Following consultation with FINRA and so long as the plan is not unacceptable to FINRA, the firm will thereafter promptly provide notice to the affected issuers in accordance with the plan.

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

Respondent specifically and voluntarily waives any right to claim an inability 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

Respondent 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, Respondent 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.

Respondent 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

Respondent 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 Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 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. Respondent 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. Respondent 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 Respondent'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. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 Respondent 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 it has agreed to the AWC's 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 it to submit it.

11/25/19
Date

D.A. Davidson & Co., Respondent

By: Jacqueline A Beauprez

Print Name: JACQUELINE BEAUPREZ

Title: SVP, General Counsel

Reviewed by:

Jonathan Hackbarth

Jonathan Hackbarth
Counsel for Respondent
Quarles & Brady LLP
411 East Wisconsin Avenue, Suite 2400
Milwaukee, WI 53202-4426

Accepted by FINRA:

12/2/2019
Date

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

C.C.

Carolyn Craig
Senior Director
FINRA
Department of Enforcement
300 S. Grand Avenue, Suite 1600
Los Angeles, CA 90071

SCHEDULE A

OFFERING DATE	PROJECT NAME, OFFERING
3/18/2016	DELL RAPIDS S D SCH DIST LTD TAX-CAP OUTLAY CTFS
3/31/2016	SARPY CNTY NEB SAN & IMPT DIST REF-HIGHWAY CROSSING INDL PK
4/5/2016	SEMINOLE CNTY OKLA EDL FACS SASAKWA PUB SCHS PROJ
4/7/2016	SALINE CNTY ILL CMNTY UNIT SCH SER C
4/8/2016	MARSHALL CNTY OKLA JUSTICE AUT
4/27/2016	CADDO CNTY OKLA EDL FACS AUTH BINGER-ONEY PUB SCHS PROJ
5/3/2016	WATERTOWN S D SCH DIST NO 14-4 REF-LTD TAX-CAP OUTLAY CTFS
5/9/2016	OLYMPIC VIEW WASH WTR & SWR REF & IMPT
5/17/2016	RIVERSIDE IOWA CORP PURP
5/18/2016	JEFFERSON CNTY NEB REF-HWY ALLOC FD
5/24/2016	GARVIN CNTY OKLA EDL FACS AUTH WYNNEWOOD PUB SCHS PROJ
5/24/2016	SPOKANE VY WASH LTD TAX
5/31/2016	SARPY CNTY NEB SAN & IMPT DIST
6/15/2016	GARFIELD CNTY OKLA EDL FACS TAXABLE-ENID PUB SCHS PROJ-B
6/15/2016	IOWA CENT CMNTY COLLEGE DORM MERGED AREA V
8/10/2016	DELL RAPIDS S D SCH DIST REF
8/12/2016	TANGIPAOA PARISH LA REC DIST LTD TAX
9/14/2016	CHEROKEE IOWA REF-CAP LN NTS-SER C
9/28/2016	CHAMPAIGN CNTY ILL CMNTY UNIT REF-SER B
10/27/2016	SOUTHERN HUMBOLDT CALIF JT UNI ELECTION 2014-SER B
10/27/2016	DEWEY CNTY OKLA EDL FACS AUTH SEILING PUB SCHS PROJ
10/27/2016	WENTZVILLE MO CTFS PARTN REF