

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8854 / September 28, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12851

In the Matter of
CDR Financial Products,
Inc., f/k/a Chambers, Dunhill, Rubin
& Co.,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against CDR Financial Products, Inc., f/k/a Chambers, Dunhill, Rubin, & Co., (“CDR” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. As a consequence of its failure to disclose certain information to the issuers of municipal bonds in Florida (the "issuers"), Respondent made material misrepresentations or omissions in the offer and sale of those municipal bonds. As described in more detail below, in particular, Respondent failed to disclose an agreement in each offering ("fee agreement") that created a risk that the Internal Revenue Service ("IRS") might deem the bonds to be taxable. As a result, Respondent violated Sections 17(a)(2) and (3) of the Securities Act.

2. The municipal bonds were issued in three bond offerings totaling \$650 million that occurred between April 1999 and January 2000 (collectively, the "bond offerings" or the "bonds"). Each of the bond offerings raised a pool of funds that was intended to be loaned to a not-for-profit entity that would use the funds to finance the acquisition and rehabilitation of projects throughout Florida. The first offering was for healthcare projects, while the second and third bond offerings involved housing projects. Respondent knew or should have known that the information it failed to disclose to the issuers was relevant to the private placement memoranda ("PPMs"), Payment and Standby Purchase Agreements ("Payment Agreements"), and a Certificate of Financial Advisor ("Certificate") that were used in the bond offerings.

3. As mentioned below, after the bonds were offered and sold, the IRS preliminarily took the position that the interest on the bonds was not tax-exempt. Ultimately, however, the issuers and another participant in the bond offerings (the "credit enhancement provider") reached a resolution with the IRS and the bonds retained their tax-exempt status. As a result, investors were not harmed.

Respondent

4. CDR was established in 1986 as a financial services and derivatives firm and has been a registered investment adviser with the Commission since 2001. CDR has its principal place of business in Beverly Hills, California.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Facts

Federal Tax Law Background

5. Under the federal tax regulations, an issuer of municipal pooled bonds must satisfy certain requirements to ensure that the bonds maintain their tax-exempt status. Among other things, the issuer must have a reasonable expectation at the time these types of pooled bonds are issued that most of the net proceeds of the issue (the “required amount”) will be loaned within three years of the date of issuance.

6. Pursuant to the federal tax regulations, the proceeds of these types of bond offerings can be invested while they remain unloaned. However, issuers earning interest yields greater than the yields on their tax-exempt debt are considered to have generated arbitrage profit, which must be rebated to the IRS in order to maintain the tax-exempt status of the interest paid on the bonds.

7. The IRS permits issuers of tax-exempt bonds, when calculating the interest yields on the bonds, to consider some types of fees to secondary parties, such as fees for credit enhancement, as payments for “qualified guarantees” if the payments meet specific IRS criteria.² A qualified guarantee can be treated as additional interest on the bonds, which serves to increase the yield at which the bond proceeds can be invested without generating positive arbitrage that would have to be rebated to the IRS in order to preserve the tax-exempt status of the bonds.³ Any fee that is improperly allocated to a payment for a qualified guarantee cannot be included as additional interest on the bonds when calculating arbitrage rebate. Failure to rebate any arbitrage profit in the time and manner specified by the IRS could jeopardize the tax-exempt status of the bonds.

The Bond Offerings and the Undisclosed Information

8. The three bond offerings were offered and sold, respectively, beginning in April 1999, December 1999, and January 2000. All of the bonds were subject to a remarketing agreement as long as they remained outstanding.

² A guarantee is qualified if it satisfies each of the following requirements: (1) as of the date the guarantee is obtained, the issuer must reasonably expect that the present value of the fees for the guarantee will be less than the present value of the expected interest savings on the issue as a result of the guarantee; (2) the arrangement must impose a secondary liability that shifts substantially all of the credit risk for all or part of the payments; and (3) fees for a guarantee must not exceed a reasonable, arm’s-length charge for the transfer of credit risk and must not include any payment for any service other than the transfer of credit risk, unless payment for other services is separately stated, reasonable, and excluded from the guarantee fee. 26 CFR 1.148-4(f)(2)-(4).

³ Positive arbitrage, or arbitrage profit, results when the interest rate earned on the investment of tax-exempt bond proceeds is higher than the interest rate paid on the bonds.

9. CDR set up the structure of the offerings and attracted some of the participants, including the credit enhancement provider for the three bond offerings, to the deals. In addition, CDR participated in the working group for all three bond offerings where issues, including tax issues, were discussed. In the second and third offerings, at the credit enhancement provider's request, CDR assumed the role of providing a preliminary analysis to potential borrowers of their request for loan proceeds. Documents in the Trust Indentures for the first and second offerings listed CDR as an advisor to each borrower. CDR's role was described as "Program Advisor" in the PPMs for the second and third bond offerings. Based on its role in the bond offerings, CDR had a duty to disclose to the issuers the existence of the fee agreement.

10. In all three bond offerings, CDR entered into the fee agreement with the credit enhancement provider, pursuant to which the credit enhancement provider was to pay CDR 0.25% annually based on the amount of unloaned bond proceeds for having brought the credit enhancement provider into the three bond offerings, and for additional services provided to the credit enhancement provider in connection with the bond offerings, such as the preliminary underwriting. CDR did not disclose the existence of the fee agreement to the issuers or the borrowers.

11. Undisclosed payment of a fee to CDR based on unloaned proceeds created a potential conflict with the bond offerings' purpose of originating loans. This risk was especially significant in the second and third bond offerings, where CDR's role as preliminary underwriter, although disclosed in the bond offering documents, created a potential conflict of interest, given that CDR was to be paid on unloaned proceeds. Without knowledge of the fee agreements, the issuers calculated and certified as to their reasonable expectations regarding loan origination and made related disclosures without all the information material to their certifications.

12. The fee agreement also created an issue as to whether these bond offerings generated arbitrage bonds. Each fee agreement stated that CDR would be paid a fee for "introducing [the credit enhancement provider] to Letter of Credit Enhancement opportunities and transactions." That reference called into question whether CDR's fee was actually part of the fee the credit enhancement provider received for credit enhancement, which could disqualify all or part of the credit enhancement fee from being a qualified guarantee and increase the risk that the bonds could be construed as arbitrage bonds.⁴

13. Each PPM, which was drafted on behalf of, and signed by, the issuer for each of the three bond offerings, failed to disclose the fee agreement, which caused them to contain

⁴ The IRS issued preliminary adverse determination letters to the issuers, asserting that the bond interest was taxable, among other reasons, because of arbitrage rebate violations resulting from improper treatment of the credit enhancement fee in each bond offering as a payment for a qualified guarantee on the bonds. Ultimately, the credit enhancement provider and the issuers reached a resolution with the IRS, pursuant to which agreed amounts were paid to the IRS and, among other things, the tax-exempt status of the bonds was preserved.

misleading information. Drafts of the PPMs were circulated to the bond offering participants, including CDR, before being finalized and distributed to investors.

14. The Payment Agreements in the second and third bond offerings also contained misleading statements and omissions. In those bond offerings, the Payment Agreements required potential borrowers to submit financial information on proposed acquisition projects to CDR for its review before applying for loan approval from the credit enhancement provider. The Payment Agreements also stated that borrowers needed to receive written approval from CDR in order to submit loan requests to the credit enhancement provider. CDR received drafts of the Payment Agreements as part of the bond offerings working group. The Payment Agreements were misleading in that they did not disclose that CDR was receiving an on-going annual fee from the credit enhancement provider based on the unloaned proceeds in these bond offerings and thereby creating a potential conflict of interest for CDR.

15. In the first bond offering, CDR executed a Certificate. In the Certificate, CDR made statements about the credit enhancement fee relevant to an analysis of the tax-exempt status of the bonds, but did not disclose the fee agreement. As a result of this omission, the Certificate was misleading.

16. Based on the facts set forth above, CDR had a duty to disclose the existence of the fee agreements to the issuers throughout the course of the bond offerings.

CDR's Violations

17. As a result of the conduct described above, CDR violated Section 17(a)(2) of the Securities Act, which proscribes obtaining money or property by means of any untrue statement of 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 in the offer or sale of securities, and Section 17(a)(3) of the Securities Act, which prohibits engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

Respondent CDR cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) or 17(a)(3) of the Securities Act.

By the Commission.

Nancy M. Morris
Secretary