

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61767 / March 24, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13830

In the Matter of

JOHN F. KENDRICK,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b), 15B(c)(4)
AND 21C OF THE SECURITIES EXCHANGE
ACT OF 1934 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b), 15B(c)(4) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against John F. Kendrick (“Kendrick” or “Respondent”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent was the senior vice president of public finance for New England in Southwest Securities, Inc.’s Medfield, Massachusetts branch office between December 1, 2000 and July 2009. Kendrick was also a registered representative associated with Southwest Securities, Inc., a registered broker-dealer and municipal securities dealer. Kendrick, 65 years old, is a resident of Medfield, Massachusetts.

B. OTHER RELEVANT ENTITY

2. Southwest Securities, Inc. (“Southwest”), incorporated in Delaware in 1991, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act since September 1, 1992 and with the Municipal Securities Rulemaking Board (“MSRB”) as a municipal securities dealer as defined in Sections 3(a)(30) and 3(a)(31) of the Exchange Act. Southwest’s principal place of business is in Dallas, Texas. At all times relevant to these proceedings, Southwest was a wholly-owned subsidiary of SWS Group, Inc.

C. BACKGROUND

3. Between December 2000 and July 2009, Kendrick engaged in activities that constituted solicitation of municipal securities business from certain issuers on behalf of Southwest. As a result, Kendrick was a “municipal finance professional” (“MFP”) associated with Southwest under MSRB Rule G-37.¹

4. Between 2003 through 2008, Kendrick contributed \$1,625 to Timothy Cahill, the treasurer of the Commonwealth of Massachusetts (hereinafter “the treasurer”). The treasurer was an incumbent who was also at the time of the contributions a candidate for elective office in the Commonwealth of Massachusetts.² The contributions were made through seven different checks during two election cycles. Specifically, on February 8, 2003, March 25, 2004 and June 22, 2005, Kendrick contributed \$250 to the treasurer through three different personal checks, for a total of \$750. These contributions were all made before the state primary election in 2006. The contributions on March 25, 2004 and June 22, 2005 placed Kendrick’s total contributions for the primary election above the \$250 *de minimis* exception.³ In addition, on December 15, 2006, May 29, 2007, December 10, 2007 and April 28, 2008, before the scheduled state primary election in 2010, in which the treasurer expected to be a candidate, Kendrick

¹ Rule G-37(g)(iv)(B) provides that “the term ‘municipal finance professional’ [includes] . . . any associated person [of a broker, dealer or municipal securities dealer] who solicits municipal securities business.” According to MSRB interpretations, soliciting municipal securities business includes, but is not limited to, responding to issuer requests for proposals. See MSRB Notice 2006-15 (June 15, 2006). Kendrick engaged in municipal securities solicitation activities by signing cover letters attached to responses to requests for qualifications (“RFQ”) for underwriting business and by having his name appear in the responses to the RFQs as a member of Southwest’s underwriting team. Although Kendrick engaged in both of these solicitation activities, either one by itself was sufficient to make him an MFP.

² Rule G-37(g)(vi) defines an “official of such issuer” as any person who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.

³ A *de minimis* exception to Rule G-37(b) allows an MFP to contribute up to \$250 per candidate per election if the MFP is entitled to vote for the candidate. If an issuer official is involved in a primary election prior to the general election, an MFP who is entitled to vote for such official can contribute a total of \$500 to that official—up to \$250 for the primary and up to \$250 for the general election. Although an MFP is permitted to contribute a total of \$500 per election cycle, the rule limits contributions to \$250 before the primary, with an additional \$250 allowed after the primary for the general election. See, e.g., MSRB G-37 Q&As, Q&A No. II.8 (May 24, 1994); Pryor, McClendon, Counts & Co., Inc. et al., Exchange Act Release No. 48095 (June 26, 2003), 2003 SEC LEXIS 1503 (“Rule G-37 limited contributions to \$250 before the primary, with an additional \$250 allowed after the primary for the general election.”).

contributed \$875 to the treasurer through four different personal checks. Each of the contributions on May 29, 2007, December 10, 2007 and April 28, 2008 placed Kendrick's total contributions above the \$250 *de minimis* exception.

5. The treasurer is responsible for, or has the authority to appoint persons who are responsible for, the hiring of brokers, dealers, or municipal securities dealers for municipal securities business by the Commonwealth of Massachusetts and certain related state governmental units, including the Massachusetts Water Pollution Abatement Trust and the Massachusetts School Building Authority (hereinafter "the Issuers").

6. Under Rule G-37, each of these contributions above the \$250 *de minimis* exception triggered a two-year ban on municipal securities business with the Issuers, starting with the dates of the contributions. Accordingly, during the first election cycle, Southwest was prohibited from engaging in municipal securities business with the Issuers for the period March 25, 2004 to June 22, 2007. During the second election cycle, Southwest was prohibited from engaging in municipal securities business with the Issuers for the period May 29, 2007 to April 28, 2010.

7. Within two years after the above non-*de minimis* contributions, Southwest, with Kendrick's knowledge, participated as co-manager for a total of 19 negotiated underwritings by the Issuers totaling approximately \$14 billion.

8. In June 2005, Kendrick co-hosted a fundraiser for the treasurer. Kendrick made approximately 82 solicitation requests for campaign contributions relating to the fundraiser. In addition, Kendrick personally delivered his own check, and the checks that he solicited from others, to a representative of the treasurer's campaign. The fundraiser raised approximately \$9,000 for the treasurer's campaign committee. At the same time of the solicitations, Southwest was engaged in or seeking to engage in municipal securities business through a response to a request for qualifications sent to the Issuers.

D. VIOLATIONS

9. As a result of the conduct described above, Kendrick willfully caused Southwest's violations of MSRB Rule G-37(b), which prohibits brokers, dealers or municipal securities dealers from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by (i) the broker, dealer or municipal securities dealer; (ii) any municipal finance professional associated with such broker, dealer or municipal securities dealer; or (iii) any political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional, unless the contribution is exempt.

10. As a result of the conduct described above, Kendrick willfully violated Rule G-37(c) of the MSRB, which prohibits, among other things, brokers, dealers, municipal securities dealers or any municipal finance professional of the broker, dealer or municipal securities dealer from soliciting any person to make any contributions or coordinating any

contributions to an official of an issuer with which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business.

11. As a result of the conduct described above, Kendrick willfully caused Southwest's violations of Section 15B(c)(1) of the Exchange Act, which prohibits a broker, dealer or municipal securities dealer from using the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of the MSRB.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to 15B(c)(4) of the Exchange Act including, but not limited to, civil penalties pursuant to Section 21B of the Exchange Act; and

D. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Rule G-37(c) of the MSRB and whether Respondent should be ordered to cease and desist from causing violations of and any future violations of Section 15B(c)(1) of the Exchange Act and Rule G-37(b) of the MSRB.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary