

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 62500 / July 14, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13830

In the Matter of

JOHN F. KENDRICK,

Respondent.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER PURSUANT
TO SECTIONS 15(b), 15B(c)(4) AND 21C OF
THE SECURITIES EXCHANGE ACT OF 1934**

I.

On March 24, 2010, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings 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.

In response to these proceedings, Respondent Kendrick has submitted an Offer of Settlement (“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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b), 15B(c)(4) and 21C of Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

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

Respondent

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.

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.

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.

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-37.²

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.³ 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

² 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.

³ 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.

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.⁴ 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 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.

⁴ 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.").

Violations

9. As a result of the conduct described above, Kendrick 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.⁵

11. As a result of the conduct described above, Kendrick 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.

Civil Penalties

12. Respondent has submitted a sworn Statement of Financial Condition dated March 9, 2010 and other evidence, including an additional Affidavit dated May 28, 2010, and has asserted his inability to pay a civil penalty in excess of \$10,000.

IV.

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

Accordingly, pursuant to Sections 15(b), 15B(c)(4), 21B and 21C of the Exchange Act, it is hereby ORDERED that:

⁵ Rule G-37 is a broad prophylactic measure. Finding a violation of Rule G-37(b), Rule G-37(c) and Section 15B(c)(1) of the Exchange Act does not require a showing of scienter or a *quid pro quo*. A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

A. Respondent Kendrick cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act, MSRB Rule G-37(b) and MSRB Rule G-37(c).

B. Respondent Kendrick shall pay \$10,000 as a civil money penalty to the United States Treasury. Based upon Respondent's sworn representations in his Statement of Financial Condition dated March 9, 2010, an Affidavit dated May 28, 2010 and other documents submitted to the Commission, the Commission is not imposing a larger penalty against Respondent.

C. Respondent shall pay the civil penalty in two installments of \$5,000 with the first installment due within 10 days of the entry of this Order and the remaining \$5,000 of which he must pay within 180 days of the entry of this Order. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies John F. Kendrick as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to John T. Dugan, Associate Regional Director, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Suite 2300, Boston, MA 02110;

D. The Division of Enforcement (“Division”) may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b), 15B(c)(4) and 21C of Securities Exchange Act of 1934 ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Carol Fox Foelak
Administrative Law Judge
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Martin F. Healey, Esq.
Louis A. Randazzo, Esq.
Boston Regional Office
United States Securities and Exchange Commission
33 Arch Street, 23rd Floor
Boston, MA 02110-1424

Mr. John F. Kendrick
c/o Paul Hogan, Esq.
Hogan & Associates
372 Granite Avenue
Milton, MA 02186

Paul Hogan, Esq.
Hogan & Associates
372 Granite Avenue
Milton, MA 02186
(Counsel for John F. Kendrick)