

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050002296-01**

RECEIVED
2008 JAN -1 A 7-57
REGISTRATION DISCLOSURE

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

RE: The GMS Group, LLC, Respondent
Broker-Dealer
CRD No. 8000

Pursuant to NASD Rule 9216 of FINRA Code of Procedure, The GMS Group, LLC, (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. The firm 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

The firm has been a member of FINRA (f/k/a NASD) since July 13, 1979 and its registration remains in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

The firm has no relevant prior disciplinary history.

OVERVIEW

In connection with matter 20050002296, the Market Regulation Department staff (the "staff") conducted a review of the firm's compliance with fixed income trading requirements during the period January 1, 2004 through June 30, 2005 (the "review period").

FACTS/VIOLATIVE CONDUCT BY RESPONDENT

1. In each of the four instances reflected on Exhibit A, the firm purchased municipal securities for its own account from a customer and/or sold municipal securities for its own account to a customer at an aggregate price (including any mark-down or mark-up) that was not fair and reasonable, taking into consideration all relevant factors, including the best judgment of the broker, dealer or municipal securities dealer as to the fair market value of the securities at the time of the transaction and of any securities exchanged or traded in connection with the transaction, the expense involved in effecting the transaction, the fact that the broker, dealer, or municipal securities dealer is entitled to a profit, and the total dollar amount of the transaction. The conduct described in this paragraph constitutes separate and distinct violations of MSRB Rules G-17 and G-30(a).
 2. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities law and regulations, and the Rules of FINRA and MSRB, concerning markups/markdowns for corporate bonds and fair and reasonable compensation for municipal bonds. Specifically, the firm's supervisory system did not include written supervisory procedures providing for a statement of the supervisory step(s) to be taken by the identified person(s). The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010 and MSRB Rule G-27.
- B. The firm also consents to the imposition of the following sanctions:

A censure and fine of \$10,000 (consisting of \$5,000 for MSRB Rule G-17 and G-30 violations and \$5,000 for deficient supervisory procedures), an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph two, and restitution by Respondent to the parties involved in the transactions listed on Exhibit A hereto in the total amount of \$2,336.87, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of the violative conduct until the date this Letter of Acceptance, Waiver and Consent is accepted by the National Adjudicatory Council.

Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph two; and, (3) the date the revised procedures were implemented.

A registered principal of the firm shall submit satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850 no later than

120 days after acceptance of this Letter of Acceptance, Waiver and Consent. If for any reason, Respondent cannot locate any customer after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed-property or abandoned-property fund for the state in which the customer last resided.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

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

The firm specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal 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, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, 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 waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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

The firm understands that:

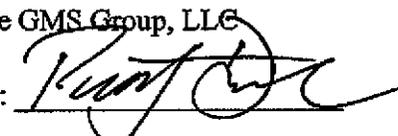
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. 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 the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. the firm 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. The firm 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm 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 firm certifies that the firm 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.

11/28/07
Date

Respondent

The GMS Group, LLC

By: 

Name: TIMOTHY J. DONOHUE

Title: EXECUTIVE V.P.

Reviewed by:

Counsel for Respondent

Accepted by FINRA:

12/31/07
Date
Attachment
Exhibit A

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



Thomas R. Gira
Executive Vice President
Department of Market Regulation

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.

The following reports were designed after the “review period” (January 1 2004 through June 30, 2005) and are utilized now on a daily basis by GMS management for monitoring and detecting potential pricing and mark-up / mark-down irregularities in municipal securities:

1. Mark-Up Exception Report – Municipals – Daily report that identifies all transactions with a calculated mark-up or mark-down that is in excess of the Firm mark-up guidelines for the particular security. The calculation compares the lowest trading account purchase price to the price of each customer purchase price of the same security on that trade date for mark-up. The calculation compares the highest sale price for all trading accounts and compares it to the customer sales of that security on the same trade date for mark-down. The report expresses each calculated mark-up or mark-down amount as a percentage of the base figure. The program also calculates the sales credit or purchase credit as a percentage of the principal amount of each customer transaction and compares it to the Firm mark-up guidelines for the particular security. The exceptional trades are reflected on the report. *[Designated Municipal Securities Principal reviews this report to determine if; a) the transaction has been correctly identified as one for which the mark-up or mark-down did in fact exceed the Firm guidelines and b) there are exceptional circumstances or other factors which support the amount of the mark-up or mark-down or the fairness of the ultimate price to the customer. The corrective action taken, or the reason no corrective action was required shall be noted on the report with supporting documentation referenced or attached to the report. Supporting documentation shall include MSRB transaction reports for the security or similar securities, relevant news reports, market indices, etc. which demonstrate the reason why the Firms contemporaneous or same day cost is not the presumed overriding factor in pricing the security involved in the identified transaction.]*
2. Retail Municipal Cross Trades with Mark-Up > 4% - Daily report that identifies all municipal security transactions for a particular CUSIP number in which the difference between a) the lowest purchase price from all customers and b) highest sale price to all customers for the previous trade date exceeds 4%. *[Designated Municipal Securities Principal reviews this report to determine if; a) the transaction has been correctly identified as one for which the combined mark-up and mark-down did, in fact exceed the Firm's guidelines and b)) there are exceptional circumstances or other factors which support the amount of the combined mark-up and mark-down or the fairness of the ultimate prices to both*

(all) of the customers. The corrective action taken, or the reason no corrective action was required shall be noted on the report with supporting documentation referenced or attached to the report. Supporting documentation shall include MSRB transaction reports for the security or similar securities, relevant news reports, market indices, etc.]

3. *Daily GMS vs. MSRB Report* – Daily report that identifies, for each CUSIP number in which GMS executed a trade, those GMS trades for which the GMS price equaled the high or low reported price for all trades reported to MSRB that day. For those CUSIP numbers in which the GMS trade(s) is the only reported trade(s) to MSRB on that trade date, the high and low reported prices to MSRB for each of the previous 5 trade dates is reflected. *[Designated Municipal Securities Principal reviews this daily report to determine if the Firm's executed trades from the previous trade date are consistent with the prices of other trades reported to MSRB in that security. Where the Firm's price is the highest or lowest reported customer trade and the difference between high and the low reported prices exceeds 4 points or 5%, the Principal reviews the MSRB reported trade data and the Firm's trading activity in the security to determine if the Firm's prices charged or paid to customers are fair and reasonable in light of the market activity. The reason for significant discrepancies between the Firm's prices and other reported transaction prices, if such can be determined, is noted on or attached to the daily report. Corrective action, if any is taken with respect to any transaction is likewise noted.]*

Enclosure

**cc: FINRA District 9 – New Jersey
Gary K. Liebowitz, Regional Director
581 Main Street, 7th Floor
Woodbridge, NJ 07095-1164**