

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009017280701**

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

RE: The GMS Group, LLC., Respondent
FINRA Member Firm
CRD No. 8000

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent The GMS Group, LLC, ("GMS" or "Respondent") 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 GMS alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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 GMS Group, LLC ("GMS") is currently, and was at all times relevant hereto, a member of FINRA, and registered as a broker-dealer with the United States Securities and Exchange Commission. GMS became a FINRA member in July 1979, and is engaged in general securities business including the sale of municipal securities. The sale of municipal securities comprises approximately 36 percent of GMS's overall business. GMS has nine branch offices and 142 registered persons. GMS does not have a relevant disciplinary history.

OVERVIEW

GMS failed to deliver official statements by settlement date to numerous customers who purchased new issue municipal securities. As a result of the foregoing, GMS violated MSRB Rules G-17, G-27 and G-32.

FACTS AND VIOLATIVE CONDUCT

MSRB Rule G-32: Disclosures in Connection with New Issues

MSRB Rule G-32(a) requires, with limited exceptions, all broker-dealers selling a new issue municipal bond to deliver a copy of the issue's official statement to the customer on or before

000046131 2011

settlement date of the purchase.¹ Delivery by settlement date is presumed to have been made if the official statement is placed in the mail at least three business days before settlement date.²

A new issue municipal bond is a municipal bond sold during the primary offering disclosure period.³ The primary offering disclosure period begins with the first submission to the underwriters of an order for the purchase of offered municipal securities⁴ or the purchase of securities from the issuer, whichever first occurs, and ends 25 days after the final delivery by the issuer or its agent of all securities of the issue to or through the underwriting syndicate or sole underwriter (usually the issue closing date).⁵ Under Rule G-32, the obligation to deliver the official statement is not limited to the underwriters of the municipal bond issue. The obligation to deliver an official statement by settlement date applies not only to underwriters, syndicate managers, syndicate members, and selling group members, but also to firms not participating in the offering that sell the municipal securities during the primary offering period and to secondary market transactions during that period.⁶

Failure to Deliver Official Statements to Customers - MSRB Rules G-32 and G-17

At various times during the period from May 8, 2008 through May 24, 2008, GMS failed to deliver official statements by settlement date to numerous customers who had purchased new issue municipal securities during the primary offering disclosure period. In all of these transactions, GMS was neither an underwriter, nor part of the underwriting syndicate. However, MSRB Rule G-32 required GMS to deliver an official statement to each customer by the settlement date.

Such acts, practices and conduct constitute separate and distinct violations of MSRB Rules G-17 and G-32 by Respondent GMS.

¹ Alternatively, pursuant to an amendment effective June 1, 2009, MSRB Rule G-32 permits broker-dealers to satisfy this delivery obligation by notifying customers how they may obtain a copy of the issue's official statement electronically.

² MSRB's "Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with New Issue Municipal Securities Under Rule G-32," November 19, 1998; NASD Regulation, Inc.'s "Municipal Securities Update – Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998).

³ MSRB Rule G-32(d)(vi).

⁴ The term "offered municipal securities" shall mean municipal securities that are sold by a broker, dealer or municipal securities dealer during the securities' primary offering disclosure period, including but not limited to municipal securities reoffered in a remarketing that constitutes a primary offering and municipal securities sold in a primary offering but designated as not reoffered. See MSRB Rule G-32(d)(vi).

⁵ MSRB Rule G-32(d)(ix).

⁶ MSRB G-32(a). See also MSRB's "Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with New Issue Municipal Securities Under Rule G-32," November 19, 1998; NASD Regulation, Inc.'s "Municipal Securities Update – Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998).

Failure to Enforce Written Supervisory Procedures - MSRB Rules G-17 and G-27

MSRB Rule G-27(a) requires broker-dealers to supervise the conduct of their municipal securities activities and to ensure compliance with MSRB Rules. MSRB Rule G-27(c) requires each broker-dealer to adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of municipal securities activities is in compliance with MSRB rules. GMS's written policies and procedures and internal compliance review procedures should clearly address new issue municipal securities relating to MSRB Rule G-32.⁷

From May 8, 2008 through May 24, 2008, GMS failed to enforce its written supervisory procedures pertaining to GMS's official statement delivery requirements to customers who purchased new issue municipal securities for secondary market transactions that occurred during the primary offering disclosure period, including those transactions in which GMS was not an underwriter, nor part of the underwriting syndicate, as required by MSRB Rule G-32.

Such acts, practices and conduct constitute separate and distinct violations of MSRB Rules G-17 and G-27 by Respondent GMS.

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

Respondent GMS is censured and fined \$50,000.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fines imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions 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

⁷ NASD Regulation, Inc.'s "Municipal Securities Update – Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998).

- 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 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.

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 records and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary records;
 - 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 rights 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 understand 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 GMS, certifies that he is duly authorized to act on GMS's 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 GMS 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 GMS to submit it.

The GMS Group, LLC

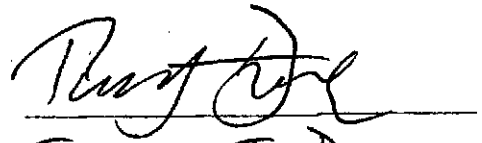
APRIL 6, 2011

Date

By:

Name:

Title:



TIMOTHY J. DONOHUE

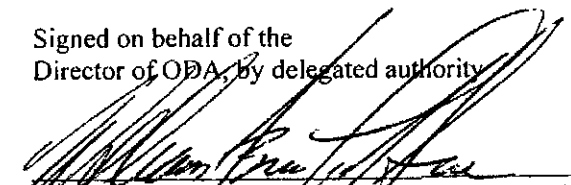
EXECUTIVE VICE PRESIDENT

Accepted by FINRA:

5/10/2011

Date

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


William Brice La Hue, Senior Regional Counsel
FINRA, Department of Enforcement
One Securities Centre, Suite 500
3490 Piedmont Road, N.E.
Atlanta, Georgia 30305
Phone: (404) 239-6111
Fax: (404) 264-1586
E-Mail: brice.lahue@finra.org