



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF: )  
 )  
MORGAN KEEGAN & COMPANY, INC., )  
CRD No. 4161, )  
 ) Case No. AP-16-04  
 )  
*Respondent.* )  
 )

**CONSENT ORDER**

**SUMMARY OF THE SECURITIES DIVISION’S ALLEGATIONS**

1. The Missouri Securities Division of the Office of Secretary of State, by and through Director of Enforcement John Phillips and Chief Counsel Tyler McCormick, (“Division”), alleged that Morgan Keegan & Company, Inc. (“Morgan Keegan”) omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in the sale of bonds related to the construction of a sucralose factory in Moberly, Missouri in 2010 in violation of Sections 409.5-501(2), RSMo (Cum. Supp. 2013),<sup>1</sup> and that this constitutes grounds to issue an order pursuant to Section 409.6-604, RSMo.
2. Morgan Keegan and the Division desire to settle the allegations and the matters raised by the Division relating to the Respondents’ alleged violations of Section 409.4-403.

**CONSENT TO JURISDICTION**

3. Morgan Keegan and the Division stipulate and agree that the Missouri Commissioner of Securities (“Commissioner”) has jurisdiction over Morgan Keegan and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Morgan Keegan and the Division stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), which provides:

“The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.”

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<sup>1</sup> Unless otherwise noted, all statutory references are to the 2013 cumulative supplement to the Revised Statutes of Missouri.

WAIVER AND EXCEPTION

5. Morgan Keegan waives its rights to a hearing with respect to this matter.
6. Morgan Keegan waives any rights that Morgan Keegan may have had to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Morgan Keegan specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter, including but not limited to any claims for attorneys' fees or other relief based on *In the Matter of Morgan Keegan, et al.*, AP-13-11.

CONSENT TO COMMISSIONER'S ORDER

7. Morgan Keegan and the Division stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
8. Morgan Keegan agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Morgan Keegan's (a) testimonial obligations; (b) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Commissioner is not a party; or (c) right to make public statements that are factual.
9. Morgan Keegan agrees that it is not the prevailing party in this action since the parties have reached a good faith settlement.
10. Morgan Keegan neither admits nor denies the allegations made by the Division, but consents to the Stipulations of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

**STIPULATIONS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER**

**I. STIPULATIONS OF FACT**

1. On July 15, 2010, the City of Moberly, Missouri ("Moberly") approved the issuance of \$39 million in municipal bonds ("Moberly Bonds") by the Industrial Development Authority for the City of Moberly ("IDA"). This was intended to finance the construction of a sucralose manufacturing and processing facility in Moberly, as well as the acquisition and improvement of the land on which it would be situated ("Moberly Bond Project").
2. As the Moberly Bond Project was structured, the IDA would loan the Moberly Bonds' proceeds to Moberly pursuant to a Financing Agreement. The Financing Agreement required Moberly to direct certain city officials to request appropriations annually for

Moberly to pay back the IDA from Moberly's accounts. This is an "annual appropriation" bond structure. Under the annual appropriation bond structure, Moberly was not legally obligated to appropriate funds to pay back the bondholders under the relevant agreements.

3. Moberly intended to provide access to the borrowed funds to Mamtek, U.S. ("Mamtek")—the U.S. affiliate of Chinese company Mamtek International, Ltd.—to design, construct, equip, manage, and operate the sucralose facility pursuant to a Management Agreement. The Management Agreement required Mamtek to pay Moberly an amount equivalent to the debt service on the Moberly Bonds thirty days before the Moberly Bond Trustee had to fulfill the payment obligation to bond owners of record.
4. Moberly and Mamtek also entered into a Development Agreement to provide for the design, construction, and development of the sucralose manufacturing facility. Under the Development Agreement, Mamtek expressly agreed that it would not use or generate hazardous chemicals in its sucralose manufacturing facility. Under the Development Agreement, the City was obligated to approve any and all engineering plans and specifications for the project in advance of their implementation. The City was also obligated to approve any and all requests for distribution of bond proceeds for use on the project.
5. Mamtek U.S. was incorporated on May 17, 2010. Mamtek intended to use revenue generated by the facility to make payments to Moberly under the Management Agreement. Furthermore, Mamtek "unconditionally guarantee[d] . . . the full and prompt payment" of its payment obligations under the Management Agreement. Moberly expected to use the funds received from Mamtek to repay the IDA and bondholders under the Financing Agreement. The Official Statement stated that "The City reasonably believes that legally available funds in an amount sufficient to pay all Basic Payments as and when due can be obtained including monies paid to the City by the Company under the Management Agreement." Finally, the Moberly Bond Trustee would pay the bondholders.
6. As security for Mamtek's obligations under the Management Agreement with Moberly, Mamtek agreed to place certain assets into escrow (the "Backstop") pursuant to an Escrow Agreement and a Security Agreement. The assets placed into escrow and comprising the Backstop were:
  - a. sales agreement with Xibo Pharmaceutical Group (the "Xibo Contract"), a Chinese company that promised to purchase sucralose from Mamtek for five years;
  - b. rights to pending patent applications related to Mamtek's sucralose-producing technology; and
  - c. Mamtek's trade secrets in producing sucralose.
7. At the request of the City of Moberly, an intellectual property valuation company, Pellegrino & Associates, LLC, was engaged to value the assets in the Backstop. Pellegrino & Associates is an independent intellectual property valuation company that has been appointed by a court to provide neutral and credible valuation opinions on intangible assets such as intellectual property.

8. Pellegrino & Associates concluded, after employing a discount rate, that the assets in the Backstop were valued at over \$52 million – a significant portion of which was attributable to the Xibo Contract – and cited the following, among other things, as risk factors:
  - a. Mamtek’s reliance on a single customer, Xibo Pharmaceutical;
  - b. the lack of a minimum purchase amount in the Xibo Contract; and
  - c. the potentially-impaired market value of Mamtek Int’l’s patent applications.
  
9. Moberly hired Respondent Morgan Keegan (“Morgan Keegan”) as the underwriter for the Moberly Bonds. Morgan Keegan served as underwriter from May 17, 2010, until Moberly Bonds’ closing on July 27, 2010 (the “underwriting period”), at which time Morgan Keegan purchased all of the Moberly Bonds to resell to the public. One of the conditions of the financing was the creation of a Debt Service Reserve Fund from the bond proceeds sufficient to provide one year of Maximum Annual Debt Service.
  
10. William Kevin Thompson (“Thompson”), Central Registration Depository (“CRD”) number 3152399, at all times relevant, was a managing director and investment banker in Morgan Keegan’s Public Finance Department at the Morgan Keegan Home Office. Thompson was a Missouri-registered securities agent with Morgan Keegan from January 15, 2009, through January 2, 2013. Since January 2, 2013, Thompson has been a registered agent with Raymond James. Thompson led the work of Morgan Keegan’s Public Finance department on the Moberly Bonds, which included communicating with and getting information from both Mamtek and Moberly, assisting with the Moberly Bonds’ financing, underwriting the Moberly Bonds, and participating in the preparation of the Official Statement. Thompson was responsible for conducting due diligence into the offering.
  
11. During the underwriting period, Mamtek made representations to Morgan Keegan, which Morgan Keegan relied on. These representations included the following:
  - a. Mamtek intended to raise between \$7 million and \$8 million to contribute to the sucralose facility;
  - b. Mamtek’s financial projections about its ability to produce or sell sucralose;
  - c. letters of intent and letters of interest from potential customers for Mamtek’s sucralose;
  - d. the purported customers to whom Mamtek sold sucralose;
  - e. Mamtek’s purported patents or patent applications relating to the production of sucralose;
  - f. Mamtek’s purportedly fully-functional sucralose production facility in Fujian Province, China; and
  - g. the sucralose-production process, which Mamtek agreed with Moberly would not involve either hazardous substances or hazardous waste, although Mamtek’s Chinese production process did in fact use triphosgene, which the Occupational Safety and Health Administration categorizes as a hazardous chemical.
  
12. In May 2010, the U.S. Patent and Trademark Office (“the USPTO”) issued a rejection of one of Mamtek’s patent applications. On January 4, 2011, the USPTO issued US Patent Number 7,862,744 to Mamtek. On June 7, 2011, the European Patent Office issued

European Patent Number 2094873 to Mamtek. On September 4, 2012, the USPTO issued US Patent Number 8,258,291 to Mamtek.

13. Morgan Keegan participated in the development of the Official Statement, which was to provide the public material information about the Moberly Bonds. The Official Statement stated that Morgan Keegan had “reviewed the information in this Official Statement in accordance with and as part of its responsibilities to investors under the Federal Securities Laws as applied to the facts and circumstances of this transaction and reasonably believes such information to be accurate and complete.”
14. The Official Statement stated the following regarding Mamtek:
  - a. “as to payments to be made by the Company, no representation or assurance can be given that the Company will realize revenues in amounts sufficient to make such payments pursuant to the Management Agreement.”;
  - b. Mamtek’s “realization of future revenues is dependent upon, among other things, the capabilities of the Company and future changes in economic and other conditions that are unpredictable and cannot be determined at this time.”;
  - c. “Construction of the project may be impeded . . . [and] this could lead to a delay in the completion and operation of the Project, which would cause a drop in revenues available to the Company to make payments under the Management Agreement.”;
  - and
  - d. “If the Company fails to occupy and operate the Project, there may be insufficient revenues to make Basic Payments to the City or enable the City to pay the principal of and interest on the Bonds.”
15. The Official Statement also stated that:
  - a. “Mamtek’s unique manufacturing processes neither require nor produce any hazardous substances to manage during production and result in no hazardous waste products for disposal”;
  - b. “Mamtek [referring collectively to Mamtek International and Mamtek U.S.] was launched five years ago”;
  - c. the Backstop included Mamtek’s “patents, trade secrets, and other intellectual property”;
  - d. Mamtek would “provid[e] for [any] remaining costs of [the sucralose facility] from [its] own funds”; and
  - e. the USPTO had issued “favorable guidance” as to Mamtek’s pending patent applications and that the latter’s patent applications would “be granted within months.”
16. The Official Statement did not disclose, among other things, the following:
  - a. financial information or operating data for Mamtek Int’l or Mamtek;
  - b. Mamtek Int’l or Mamtek’s financial results in producing or selling sucralose;
  - c. the identity of Mamtek Int’l or Mamtek’s officers, directors, or employees;
  - d. the date of Mamtek U.S.’s incorporation; and

- e. although the Official Statement did disclose that “information has been furnished by the Authority and other sources which are believed to be reliable,” it did not identify the other sources of information.
17. The Official Statement disclosed the following risks to investors regarding Moberly:
    - a. “THE CITY IS NOT LEGALLY OBLIGATED TO APPROPRIATE FUNDS TO PAY THE BASIC PAYMENTS OR ADDITIONAL PAYMENTS UNDER THE FINANCING AGREEMENT.”
    - b. “IF AN EVENT OF NON-APPROPRIATION OCCURS, THE CITY SHALL NOT BE OBLIGATED TO MAKE PAYMENT OF BASIC PAYMENTS PROVIDED FOR IN THE FINANCING AGREEMENT.”
  18. The Official Statement also included audited financial statements of the City of Moberly for Fiscal Year 2009 (the most recent fiscal year) and estimated revenues and expenditures for Fiscal Year 2010.
  19. Standard & Poor’s, a nationally recognized rating agency, reviewed the information contained in the Official Statement and conferred a rating of “A-” on the Moberly Bonds on June 28, 2010.
  20. During the underwriting period, Morgan Keegan agents sought indications of interest on the Moberly Bonds from institutional investors as part of the firm’s efforts to establish a market price for the Moberly Bonds. Some institutional investors declined to offer to purchase the Moberly Bonds, citing the lack of available information about Mamtek. Other institutional investors, given the same information, provided indications of interest totaling in excess of \$25 million and ultimately purchased more than \$28 million Moberly Bonds from Morgan Keegan on the initial offering at initial offering prices.
  21. Morgan Keegan management held discussions regarding the use and/or requirement of a “suitability” or “Big Boy” letter – that is, a letter containing a warning as to a bond’s high risk and the investor’s understanding of that risk – with the sale of the Moberly Bonds. Morgan Keegan received a signed Big Boy letter from one Missouri chartered-bank as a part of a sale of the Moberly Bonds. Ultimately, Morgan Keegan did not require any investors to sign a “Big Boy” letter prior to purchasing Moberly Bonds.
  22. Morgan Keegan provided information regarding the Moberly Bonds taken from the Official Statement to Morgan Keegan sales agents offering or selling the Moberly Bonds in Missouri.
  23. In July 2010, Morgan Keegan sold the Moberly Bonds to approximately 140 purchasers, including 27 Missouri purchasers.
  24. In late July 2010, construction began on the sucralose facility. The construction was delayed for a variety of reasons, including changes to the site plan, difficult soil, and difficult winter weather.

25. Despite these delays in construction of the facility, on March 1, 2011, the Moberly Bond Trustee made the first payment to all purchasers of Moberly Bonds as anticipated.
26. On or about August 1, 2011, Mamtek did not make a required payment to Moberly under the Management Agreement. On or about August 15, 2011, Moberly did not make a required payment to the Moberly Bond Trustee under the Financing Agreement.
27. On September 1, 2011, the Moberly Bond Trustee made the second scheduled payment to all purchasers of Moberly Bonds using funds in the Debt Service Reserve Fund.
28. On September 1, 2011, the Moberly Bond Trustee published a Notice of Default. On September 22, 2011, Standard & Poor's lowered its long-term rating on the Moberly Bonds from "A-" to "CC." On March 23, 2012, Standard & Poor's lowered its long-term rating from "CC" to "D."
29. As compensation for underwriting the Moberly Bonds, Morgan Keegan received a discount of \$411,000 on the Moberly Bonds it purchased from Moberly.
30. Subsequent to the Moberly Bond transaction, from approximately October 2010 until January 1, 2014, Thompson has not participated as lead underwriter for any Morgan Keegan bond offerings in the State of Missouri.
31. Many of the Morgan Keegan employees who worked on the underwriting of the Moberly Bonds are now employed by Raymond James & Associates, Inc.
32. The U.S. Securities and Exchange Commission issued an Order, dated June 18, 2015 (the "SEC Order") relating to municipal bond disclosures and municipal bond underwriting due diligence relating to SEC Rule 15c 2-12 at Raymond James & Associates, Inc.
33. Pursuant to the SEC Order, Raymond James & Associates, Inc. agreed to engage an independent consultant to evaluate its municipal bond due diligence underwriting policies and procedures and to prepare a report containing recommendations (if any) for improvement of those policies and procedures.
34. To the extent that individuals who worked on the underwriting of the Moberly Bond transaction are now employed by Raymond James & Associates, Inc., they will be bound by Raymond James & Associates, Inc.'s compliance with the terms and conditions of the SEC Order.

## **II. CONCLUSIONS OF LAW**

1. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Division, finds and concludes that the Commissioner has jurisdiction over Morgan Keegan and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409.

**III. ORDER**

**NOW, THEREFORE**, it is hereby Ordered that:

1. Morgan Keegan shall submit the report prepared by the Independent Consultant pursuant to the SEC Order to the Commissioner, which shall include the Independent Consultant's recommendations for changes in or improvements to Raymond James & Associates, Inc.'s municipal bond underwriting policies and procedures. Morgan Keegan agrees to abide by the Commissioner's reasonable requests and provide further evidence of compliance with such requests. Within one year from the execution of this Consent Order, Morgan Keegan shall submit evidence of compliance with the SEC Order to the Commissioner.
  
2. As set forth in the agreement with the Commissioner to settle the case of *State ex rel. Andrew Hartnett, Commissioner of Securities v. Morgan Keegan & Company, et al.*, Case No. 13BA-CV04375 (Boone County, Missouri Circuit Court), and as a condition of that settlement, Morgan Keegan shall pay to the Commissioner the sum of \$850,000, \$750,000 of which the Commissioner shall send to the General Revenue Fund, and \$100,000 of which the Commissioner shall send to the Missouri Secretary of State's Investor Education and Protection Fund. These amounts shall be paid within ten days of the execution of this Consent Order. The Commissioner shall provide wire transfer instructions for these payments.
  
3. Morgan Keegan shall bear its own costs and attorney's fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 8<sup>th</sup> DAY OF February, 2016.



JASON KANDER  
SECRETARY OF STATE

*Andrew M. Hartnett*

ANDREW M. HARTNETT  
COMMISSIONER OF SECURITIES



Consented to by:

THE MISSOURI SECURITIES DIVISION



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John Phillips  
Director of Enforcement

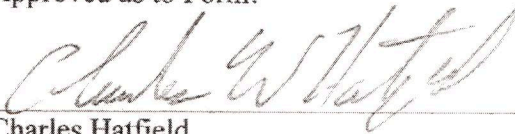
RESPONDENT



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Allison S. Crane, Vice President  
Morgan Keegan & Company, Inc.

Approved as to Form:



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Charles Hatfield  
Attorney for Respondent