

**STATE OF ALABAMA  
ALABAMA SECURITIES COMMISSION**

<b>IN THE MATTER OF:</b>	)	
	)	
	)	
<b>MORGAN KEEGAN AND COMPANY, INC.</b>	)	<b>ADMINISTRATIVE ORDER</b>
	)	<b>NO. CO-2009-0020</b>
	)	
<b><u>RESPONDENT</u></b>	)	

**CONSENT ORDER**

**WHEREAS**, at all relevant times, **Morgan Keegan & Company, Inc.** (“Respondent” or “Morgan Keegan”) was a broker dealer registered in the State of Alabama; and

**WHEREAS** Respondent’s activities regarding the sale of auction rate securities (“ARS”) were the subject of an investigation conducted by the Alabama Securities Commission; and

**WHEREAS**, on July 21, 2009 the Alabama Securities Commission (the “Commission”) entered a Show Cause Order in this matter, No. SC-2009-0020, requiring **Respondent** to show cause why it should not receive fines or other penalties for its conduct in relation to ARS; and

**WHEREAS**, **Respondent** answered the Show Cause Order on September 25, 2009, and has cooperated with the Commission by providing documentary evidence and other materials, providing the Commission with access to information relevant to its investigation, and establishing its efforts to repurchase ARS it underwrote or sold in Alabama to customers; and

**WHEREAS**, **Respondent** has also defended similar claims brought by the Securities Exchange Commission under federal securities law regarding ARS sales, culminating in a judgment rendered by the Honorable William S. Duffy, United States District Judge for the Northern District of Georgia, in Findings of Fact and Conclusions of Law entered on February

15, 2013 (the “Federal Court Order”), in which the federal court found violations of Section 17(a)(2) of the Securities Act of 1933, 15 U.S.C. § 77q(a)(2), because of certain instances of negligent nondisclosure by **Respondent’s** representatives. S.E.C. v. Morgan Keegan & Company, Inc., Case No. 1:09-cv-1965-WSD (N.D.Ga., Feb. 15, 2013); and

**WHEREAS, Respondent** voluntarily agreed, beginning in 2009 and continuing with separate categories of purchasers through 2011, to repurchase ARS from certain customers and to use best efforts to provide liquidity solutions for certain other customers, and in response to the Federal Court Order, repurchased other, specific ARS; and

**WHEREAS,** on March 22, 2017, **Respondent** and the Commission reached an agreement to resolve the Show Cause Order and the investigation relating to **Respondent’s** underwriting and sale of ARS; and

**WHEREAS, Respondent** elects to waive permanently any right to a hearing or appeal under Section 8-6-25, Code of Alabama 1975, with respect to this Administrative Consent Order (the “Order”) and

**WHEREAS, Respondent** admits the jurisdiction of the Commission and consents to the entry of this Order by the Commission, and

**WHEREAS, Respondent** neither admits nor denies the Findings of Fact or Conclusions of Law contained in this order.

**WHEREAS, Respondent** states that the information and assertions presented by **Respondent** to the Commission during the Commission’s investigation of this matter are true and correct; that **Respondent** understands the Commission relied upon such information and assertions by **Respondent** in its determination to accept this Order, and that should this information or these assertions by **Respondent** prove to be incorrect or misrepresented, the

Commission may seek such other administrative, civil, or criminal remedies that may be available to it under the provisions of the Act.

**NOW, THEREFORE**, the Commission as Administrator of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act (“Act”), hereby enters this Order:

### **RESPONDENT**

1. **Morgan Keegan** (CRD No. 4161) was at all times material herein, a registered securities dealer in the State of Alabama pursuant to Section 8-6-3 Code of Alabama 1975, with its home office at 50 Front Street, Memphis, Tennessee, 38103-9980.

2. **Morgan Keegan**, at all times material herein, also was a federally registered Investment Advisor conducting business in the State of Alabama.

### **I.**

### **FINDINGS OF FACT**

3. **Respondent** was, at all times material herein, in the business of effecting transactions in securities in Alabama as a “broker-dealer” within the meaning of Act.

4. **Respondent** had customers located across the United States of America, including Alabama.

5. Prior to February 13, 2008, **Respondent** sold financial instruments known as ARS to Alabama residents.

### **ARS**

6. ARS are debt or preferred equity securities whose interest rates or dividend yields are periodically reset through an auction process, typically every seven (7), twenty-eight (28), or thirty-five (35) days.

7. Due to various market conditions in the early part of 2008, many of the broker-dealers that acted as underwriters of the ARS offerings or as lead managers for the ARS auctions stopped submitting their own bids in support of the ARS auctions, and by February 13, 2008, the ARS market began to experience widespread auction failures, leaving ARS investors, including some of **Respondent's** customers throughout the United States of America, unable to sell their ARS holdings.

8. On February 13, 2008, and for several years that followed, the ARS market continued to experience widespread failures, making ARS holdings illiquid.

#### **Respondent's Role in the ARS Market**

9. **Respondent** underwrote certain ARS, and through its brokers, it sold other ARS to customers at various times.

10. In the Federal Court Order, Judge Duffy found that in certain instances, "Morgan Keegan brokers ...neglected to fully inform investors of the ARS risk when marketing the ARS product, to include informing them of the risk of auction failures, the concomitant loss of liquidity, and varying interest rates." Federal Court Order at p.130.

11. Judge Duffy concluded that the SEC had "met its burden to prove that certain brokers negligently made material misrepresentations or negligently omitted material information about ARS to [certain] Morgan Keegan customers," and he therefore found that **Respondent** had violated Section 17(a)(2) of the Securities Act. Federal Court Order at pp. 131-32.

12. **Respondent** has undertaken certain repurchases of ARS that it either underwrote or sold, through multiple tender offers to customers since 2009, including specific repurchases for certain individuals discussed in Judge Duffy's Order.



13. As a result of its offers to repurchase ARS, **Respondent** has repurchased roughly One Billion Dollars (\$1,000,000,000) in ARS underwritten by **Respondent**, and roughly One Billion Dollars (\$1,000,000,000) in ARS underwritten by other entities but sold by **Respondent's** agents. See Federal Court Order at pp. 39-40

## II.

### CONCLUSIONS OF LAW

14. The Commission has jurisdiction over this matter pursuant to Section 8-6-3 and 8-6-4, Code of Alabama 1975, the Alabama Securities Act.

15. One of the specific violations of Section 17(a)(2) of the Securities Act, found in the Federal Court Order constitutes a violation of Section 8-6-3(j)(6), Code of Alabama 1975, the Alabama Securities Act, because it also relates to an Alabama purchaser of ARS, and under the Alabama Securities Act, would constitute a basis for an order by the Commission.

## III.

### ORDER

**On the basis of the Findings of Fact, Conclusions of Law, and Respondent's consent to the entry of this Order,**

**It is hereby ORDERED:**

1. This order concludes the investigation by the Commission, terminates the Show Cause Order No. SC-2009-0020, and precludes any other action that the Commission could commence against the **Respondent** under applicable Alabama Law on behalf of the State of Alabama as relates to **Respondent's** underwriting of ARS and sale of ARS to investors.

2. This Order is solely for the purpose of dissolving the above-referenced Show Cause Order, No. SC-2009-0020, and the investigation, and it is not intended to be used for any other purpose.

3. **Respondent** shall cease and desist from violating the Code of Alabama 1975, the Alabama Securities Act, and will comply with the Act.

4. In lieu of payment of administrative expenses incurred by the Commission in the course of this investigation and initiation of its Show Cause Order, **Respondent** is contemporaneously contributing Fifteen Thousand Dollars (\$15,000.00) to the Investor Protection Trust, designated for the State of Alabama Financial Education Programs through the Alabama Securities Commission and Five Thousand Dollars (\$5,000.00) to the Alabama Council on Economic Education. These amounts shall be paid by check to the stated recipients, delivered to the Commission, within ten (10) days from the entry of this Order.

5. The Commission does not intend for this Order to indicate that **Respondent**, or any of its affiliates or current or former employees, shall be subject to any disqualification contained in the Federal Securities law, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations, or various states' securities laws, including any disqualifications from relying upon the registration exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for any such disqualification. While this Order, in itself, shall not serve as a disqualifier from participation in the Securities industry in Alabama, it will be considered, in conjunction with **Respondent's** overall disciplinary history, in future licensing and registration decisions made by the Commission staff with respect to **Respondent**.

6. Except in an action by the Alabama Securities Commission to enforce the obligations of **Respondent** in this Order, this Order may neither be deemed nor used as an admission of or evidence of any alleged fault, omission, or liability of **Respondent** in any civil, criminal, arbitration or administrative proceeding in any court, administrative agency or tribunal. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against **Respondent** including, without limitation with respect to the use of any e-mails or other documents **Respondent** or others concerning the marketing and/or sales of ARS, limit or create liability of **Respondent**, or limit or create defenses of **Respondent** to any claims.

**AGREED AND CONSENTED TO ON THE DATES INDICATED:**

**MORGAN KEEGAN & COMPANY, LLC**  
**f/k/a MORGAN KEEGAN & COMPANY, INC.**

By: Alison A. Crane

Its: Vice President

Date: 6/13/2017

**ALABAMA SECURITIES COMMISSION:**

  
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JOSEPH P. BORG, DIRECTOR

Date: 6/27/2017

