

Bond Case Briefs

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Muni Bond Issuer and Underwriter Charged With Disclosure Failures.

The Securities and Exchange Commission today announced that a municipal financing authority in Beaumont, California, and its then-executive director have agreed to settle charges that they made false statements about prior compliance with continuing disclosure obligations in five bond offerings.

Also settling charges are the underwriting firm behind those offerings and its co-founder for failing to conduct reasonable due diligence on the continuing disclosure representations.

The SEC's Enforcement Division uncovered the violations as part of a review of municipal issuers and underwriters that did not voluntarily self-report under the agency's Municipalities Continuing Disclosure Cooperation (MCDC) Initiative. The Beaumont Financing Authority and the underwriter, O'Connor & Company Securities Inc., would have been eligible for more lenient remedies had they self-reported during the MCDC Initiative.

According to the SEC's order, the Beaumont Financing Authority had issued approximately \$260 million in municipal bonds in 24 separate offerings from 2003 to 2013 for the development of public infrastructure. For each of those offerings, a community facilities district established by Beaumont agreed to provide investors with annual continuing disclosures, including important financial information and operating data. From at least 2004 to April 2013, the district regularly failed to provide investors with the promised information. The Beaumont Financing Authority failed to disclose this poor record of compliance when it conducted the 2012 and 2013 offerings totaling more than \$32 million. As a result, the bonds appeared more attractive and investors were misled about the likelihood that the district would comply with its continuing disclosure obligations in the future.

"Investors in municipal bonds depend on timely and complete continuing disclosure from municipal issuers," said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division's Public Finance Abuse Unit. "Issuers and underwriters will continue to be held accountable when they fail to provide investors with an accurate picture of past compliance with continuing disclosure obligations."

In a complaint filed in the Eastern Division of the U.S. District Court for the Central District of California, the SEC charged Beaumont's then-city manager Alan Kapanicas, who also served as the Beaumont Financing Authority's executive director. According to the complaint, he approved and signed the misleading offering documents. Kapanicas agreed to settle the charges without admitting or denying the allegations, and pay a \$37,500 penalty. He also agreed to be barred from participating in any future municipal bond offerings.

In consenting to an SEC order without admitting or denying the findings, the Beaumont Financing Authority agreed to retain an independent consultant to review its policies and procedures. It also is required to establish appropriate and comprehensive policies, procedures, and training for employees as well as designate a compliance officer in order to ensure compliance with continuing disclosure agreements.

O'Connor & Company Securities Inc. and its co-founder and former primary investment banker Anthony Wetherbee agreed to settle the charges against them without admitting or denying the SEC's findings. O'Connor & Company Securities Inc. will pay a \$150,000 penalty and retain an independent compliance consultant to review its policies and procedures. Wetherbee will pay a \$15,000 penalty and serve a suspension from the securities industry for six months.

The SEC's investigation was conducted by Steven Varholik and Jason H. Lee of the Public Finance Abuse Unit with assistance from Deputy Chief Mark R. Zehner, Jonathan Wilcox, and Creighton L. Papier. The investigation was supervised by Monique C. Winkler.

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