

Bond Case Briefs

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SEC Charges Issuer, Dealer, Others in First Post-MCDC Enforcement Action.

PHOENIX – The Beaumont, Calif. Financing Authority, its former executive director, underwriter O'Connor & Company Securities Inc., and its co-founder have been charged by the Securities and Exchange Commission over false statements made about prior compliance with continuing disclosure obligations in five bond offerings.

All four entities agreed to settle the charges against them without admitting or denying the commission's findings.

This is the commission's first post-Municipalities Continuing Disclosure Cooperation initiative disclosure enforcement action.

The SEC said the parties would have been eligible for more lenient enforcement treatment under MCDC had they voluntarily reported the conduct under that program. But they did not so.

"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."

The charges stem from bond issuances in 2012 and 2013. According to the SEC, BFA, located in Riverside County, had issued approximately \$260 million in bonds in 24 separate offerings from 2003 to 2013 to help finance the development of infrastructure. For those offerings, City of Beaumont Community Facilities District No. 93-1, a community facilities district established by Beaumont that agreed to provide investors with continuing disclosures, including annual financial information and operating data. From at least 2004 to April 2013, the district regularly failed to provide investors with information in accordance with its continuing disclosure agreement.

"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," the SEC said. "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."

The SEC charged BFA with negligence in committing securities fraud. BFA agreed to cease and desist from future securities law violations and to retain an independent consultant to review its policies and procedures. It also agreed 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.

Alan Kapanicas, 65, Beaumont's former city manager who also had been former executive director of BFA, agreed to pay a \$37,500 penalty and be barred from participation in any future municipal bond offerings. The SEC said he "failed to exercise reasonable care" and "repeatedly either failed to read and understand the district's continuing disclosure agreements or disregarded their requirements."

He was also charged with negligence in committing securities fraud.

O'Connor & Company Securities, based in Costa Mesa, Calif., agreed to pay a \$150,000 penalty, for violating securities fraud laws and Municipal Securities Rulemaking Board Rules G-17 on fair dealing and G-27 on supervision. It agreed to retain an independent consultant to conduct a review of its policies and procedures as they relate to the investigation of the truthfulness and completeness of key representations contained in municipal securities offering documents.

Under the MCDC, underwriter penalties were set at \$20,000 for each offering of \$30 million or less containing materially false statements about continuing disclosures. Had it participated in the MCDC, O'Connor & Company could have shaved \$50,000 off its penalty.

Anthony Wetherbee, 71, the firm's co-founder and former primary investment banker, will pay a \$15,000 penalty and be suspended from the securities industry for six months. He was also charged with negligence in committing securities fraud and violating the MSRB's fair dealing rule.

"Wetherbee, and through his actions, OCSI, failed to conduct adequate due diligence and, as a result, failed to form a reasonable basis for believing in the truthfulness of BFA's assertions that the district had complied with its prior CDAs contained in the BFA's 201 and 2013 official statements," the SEC said. Neither the banker nor his firm ever checked the MSRB's EMMA system to determine if the assertions were truthful and complete, the commission said.

Neither Beaumont nor O'Connor & Company could be reached for comment.

The conduct alleged by the SEC in this case is precisely what the MCDC was designed to bring attention to. Rolled out in spring 2014, the initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the previous five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements. In total, the initiative led to settlements with 72 issuers from 45 states and 72 underwriters representing 96% of the underwriting market. In December, the SEC announced it was finished with MCDC settlements and would turn its attentions to violators who did not report, whom the SEC considered to be at high risk for future violations.

The Bond Buyer

By Kyle Glazier

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