[Bond Case Briefs]

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[SEC Charges City of South Miami with Defrauding Investors About Tax-Exempt Status of Municipal Bonds.]

Washington, D.C., May 22, 2013 — The Securities and Exchange Commission today charged the City of South Miami, Fla., with defrauding bond investors about the tax-exempt financing eligibility of a mixed-use retail and parking structure being built in its downtown commercial district.

An SEC investigation found that the city of 11,000 residents located in Miami-Dade County borrowed approximately $12 million in two pooled, conduit bond offerings through the Florida Municipal Loan Council (FMLC). South Miami's participation in those offerings enabled it to borrow funds at advantageous tax-exempt rates. The city represented that the project was eligible for tax-exempt financing in various documents for the second offering that were relied upon by bond counsel in rendering its tax opinion. However, South Miami failed to disclose that it had actually jeopardized the tax-exempt status of both bond offerings by impermissibly loaning proceeds from the first offering to a private developer and restructuring a lease agreement prior to the second offering.

South Miami agreed to settle the charges and retain an independent third-party consultant to oversee its policies, procedures, and internal controls for municipal bond disclosures.

"South Miami's fraudulent conduct put bondholders in danger of incurring significant additional costs associated with their investments," said Elaine C. Greenberg, Chief of the SEC Enforcement Division's Municipal Securities and Public Pensions Unit. "The tax-exempt status of municipal bonds is vitally important to bond investors, and we will closely scrutinize any conduct by issuers or others that threatens that tax exemption."

Eric I. Bustillo, Director of the SEC's Miami Regional Office, added, "Municipalities in South Florida and elsewhere cannot rely on a lack of internal procedures or experience in debt offerings to excuse fraudulent disclosures made to investors."

According to the SEC's order instituting settled administrative proceedings, South Miami sought financing to develop a public parking garage. The project ultimately became a mixed-use retail and public parking structure to be developed by a for-profit developer. Under the initial lease agreement between the city and the developer, the city was responsible for all construction costs except the retail portion. The city retained full control over the operation and maintenance of the parking garage portion and all parking revenues. The developer's limited role was critical to the city receiving the benefits of tax-exempt financing. Under IRS regulations, the project could be financed on a tax-exempt basis only if its use by the for-profit developer was kept to a minimum.

According to the SEC's order, South Miami approved the financing for construction of the tax-exempt portion of the project and moved ahead with its participation in the initial FMLC 2002 bond pool offering. However, upon receiving a copy of the city's lease agreement with the developer, bond counsel identified a potential tax issue with the mixed public-retail nature of the project. During subsequent conference calls with the city's then-finance director, bond counsel communicated to city officials that no funds from the bond offering could be used to finance the retail portion of the structure.

However, the SEC found that subsequent city finance directors were unaware of the substance of these discussions or how the lease agreement affected the tax status of the bonds. Moreover, subsequent city finance directors had no previous experience, training, or guidance on disclosure requirement or tax issues in bond offerings. When the lease agreement was revised in 2005 to lease not only the retail space to the developer but the parking garage as well, the updated terms caused the project to be considered private business use, which jeopardized the tax-exempt status of the bonds. South Miami did not inform the FMLC, bond counsel, or any third parties about the project changes. Documents for the second 2006 FMLC bond pool offering contained material misrepresentations and omissions about the use of the offering's proceeds and the altered terms of the parking garage lease.

According to the SEC's order, annual certifications made by the city to the FMLC from 2003 to 2009 incorrectly stated that South Miami was in compliance with the terms of the loan agreements, which included representations that no event had occurred affecting the tax-exempt status of the bonds. South Miami eventually filed a material event notice with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) system in July 2010 that publicly acknowledged a potential adverse impact on the bonds' tax exemption. Separately, the city settled with the IRS by paying $260,345 and defeasing a portion of the two prior bond offerings at a cost of $1.16 million. Because of the city's settlement and payments, bondholders were not financially harmed and they're not required to include any interest from the bonds in their gross incomes.

The SEC's order directs South Miami to cease and desist from committing or causing any violations of Sections 17(a)(2) and (3) of the Securities Act of 1933. The city must retain an independent third-party consultant, who for three years will conduct annual reviews of the city's policies, procedures, and practices related to its disclosures for municipal securities offerings. The city must abide by the independent consultant's determinations and implement all recommendations. South Miami neither admitted nor denied the SEC's findings. A full description of the undertakings can be found in the SEC's order.

This SEC's investigation was conducted in the Miami Regional Office by Senior Counsel Sean M. O'Neill under the supervision of Assistant Regional Director Jason R. Berkowitz, both members of the Municipal Securities and Public Pensions Unit.

The order can be found at:

http://www.sec.gov/litigation/admin/2013/33-9404.pdf