

# **Bond Case Briefs**

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## **SEC Charges School District and Muni Bond Underwriter in Indiana with Defrauding Investors.**

The Securities and Exchange Commission (Commission) today charged a school district in Indiana and its municipal bond underwriter with falsely stating to bond investors that the school district had been properly providing annual financial information and notices required as part of its prior bond offerings.

In new municipal bond offerings, an official statement is prepared by a municipal issuer or its underwriter to describe the essential terms of the bonds and other pertinent information for investors.

An SEC investigation revealed that in an official statement prepared in 2007 for a bond offering on behalf of West Clark Community Schools that was underwritten by Indianapolis-based City Securities Corporation, the school district stated that it was in compliance with its disclosure obligations related to prior bond offerings. However, West Clark had not submitted any of the required annual reports or notices for a 2005 bond offering, and City Securities did not conduct adequate due diligence to detect the false statement in the course of the 2007 offering.

The SEC also charged Randy G. Ruhl, who heads the public finance & municipal bond department at City Securities, for the misconduct involving West Clark's disclosures. The SEC's investigation further found that City Securities and Ruhl provided improper gifts and gratuities to representatives of municipal bond issuers, and then wound up charging these and other expenses back to the issuers under the guise of costs for "printing, preparation and distribution of official statements."

City Securities agreed to pay nearly \$580,000 to settle the SEC's charges, and Ruhl and West Clark Community Schools also agreed to settlements, which include a one-year collateral bar and a permanent supervisory bar for Ruhl.

"This is the first time the SEC has charged a municipal issuer with falsely claiming in a bond offering's official statement that it was fully compliant with the annual disclosure obligations it agreed to in prior offerings, and an underwriter and its principal for not doing the necessary research to attest to the truthfulness of that claim," said Andrew Ceresney, Co-Director of the Division of Enforcement. "West Clark Community Schools defrauded bond investors by leading them to believe that it had provided the annual financial information contractually required in a prior bond offering, when in fact for five years they failed to submit the required information. This case demonstrates that we will be vigilant in making sure municipal issuers and underwriters comply with their obligations."

Elaine C. Greenberg, Chief of the Enforcement Division's Municipal Securities and Public Pensions Unit, added, "City Securities abused its role as municipal underwriter by fraudulently obtaining reimbursement from bond proceeds for expenses unrelated to the issuance of bonds. Moreover, City Securities violated MSRB rules by providing representatives of municipal securities issuers with valuable and excessive gifts such as multi-day golf trips and tickets to various sporting events."

According to the SEC's orders instituting settled administrative proceedings, Rule 15c2-12 generally prohibits an underwriter from purchasing or selling municipal securities unless the issuer has contractually agreed to provide annual financial information and event notices to investors through information repositories. In its \$52 million municipal bond offering in 2005, West Clark agreed to submit annual reports and notices to Nationally Recognized Municipal Securities Information Repositories (NRMSIRs), an obligation it never fulfilled. In December 2007, the school district issued a \$31 million bond offering, which triggered a requirement to describe instances where it had failed to materially comply with its prior disclosure obligations. The official statement for this 2007 offering contained a section entitled "Compliance with Previous Undertakings" affirming that in the previous five years, the school district "never failed to comply, in all material respects, with any previous undertakings." The official statement was approved, certified, and disseminated to the public. The school district also signed a certificate and affidavit attesting that the official statement did not contain any untrue statement of material fact. Since West Clark had never submitted any annual reports or notices in its 2005 offering, these attestations in the 2007 offering were materially false and misleading.

Without admitting or denying the SEC's findings, West Clark consented to an order to cease and desist from committing or causing any violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5. The school district has undertaken remedial actions including the adoption of written policies for its continuing disclosure obligations and the designation of an individual responsible for ensuring compliance with those obligations. The school district also has implemented annual training for personnel involved in the bond offering and disclosure process.

The SEC's investigation further revealed that between 2007 and 2010, City Securities provided improper gifts and gratuities to representatives of municipal bond issuers in violation of Municipal Securities Rulemaking Board (MSRB) Rule G-20. Without the issuers' knowledge, City Securities mischaracterized the expenses associated with these gifts and mischaracterized charitable donations, entertainment expenses, and other "miscellaneous" items as legitimate operating costs so the company could bill these expenses back to the unknowing issuers.

City Securities consented to an SEC order, without admitting or denying the findings, to cease and desist from committing or causing any violations of Section 17(a) of the Securities Act, Sections 10(b) and 15B(c)(1) of the Exchange Act and Rules 10b-5 and 15c2-12, and MSRB Rules G-17 and G-20. City Securities agreed to be censured and pay disgorgement and prejudgment interest of \$279,446 as well as a penalty of \$300,000. City Securities has taken a number of remedial actions to enhance its disclosure and expense reimbursement policies, including reviewing and amending policies and procedures as well as engaging independent compliance counsel.

Ruhl, without admitting or denying the findings, similarly consented to cease and desist from committing or causing any violations of these provisions of the federal securities laws. He agreed to pay disgorgement and prejudgment interest of \$20,320 as well as a penalty of \$18,155. Ruhl is subject to a collateral bar, penny stock bar, and investment company bar with the right to apply for reentry after one year, and he is permanently barred from association in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or credit rating agency.

The SEC's investigation was conducted by Peter K. M. Chan along with Eric A. Celauro and Sally J. Hewitt in the Municipal Securities and Public Pensions Unit in the SEC's Chicago Regional Office. The investigation resulted from a referral from the Chicago Regional Office's examination staff including Thomas P. Conroy, Atif M. Shameem, John W. Ekdale, and Paul N. Mensheha. (Press Rel. 2013-136; Rel. 33-9434; Rel. 33-9435)

