Bond Case Briefs

Municipal Finance Law Since 1971

SEC Charges Underwriter, Issuer Over Disclosure.

For the first time, the Securities and Exchange Commission has charged an issuer, an underwriter, and one of its officials with falsely claiming in bond documents that the issuer was meeting its secondary market disclosure obligations when it wasn't.

The issuer is West Clark Community Schools, based in Clark County, Ind. The SEC also charged the underwriter, Indianapolis-based City Securities Corp. and its senior executive vice president Randy G. Ruhl, with giving improper gifts and gratuities to other issuers and then reimbursing the firm by characterizing the expenses as bond issuance costs.

The disclosure charges come 18 years after the SEC Rule 15c2-12 secondary market disclosure requirements took effect. Sources have long contended the SEC was reluctant to take action against broker-dealers for issuer disclosure failures because the whole muni disclosure system is aimed at issuers but regulated and enforced through the broker-dealer community. The SEC has no regulatory authority over issuers.

Under the SEC's Rule 15c2-12, firms are barred from underwriting bonds if the issuer has not contractually agreed to disclose annual financial information and events as they occur. The issuer must disclose any instances in which it has failed to comply with its disclosure obligations over the past five years.

According to the SEC, West Clark Community Schools, which has about 400 staff and 4,500 students, agreed in the official statement for $52 million of bonds it issued in March 2005 to disclose annual financial and operating information as well as event notices.

Its underwriter was City Securities, which has about 200 employees and seven branch offices in Indiana, ranked 39 of 197 underwriters for 2012. Randy G. Ruhl, 56, is supervisor of the firm's public finance and municipal bond department.

City Securities also underwrote $31 million of bonds for West Clark in December 2007. In the OS for those bonds, the school district claimed it had not failed to meet its disclosure obligations during the previous five years. However, that statement was false and a violation of the securities antifraud laws because West Clark did not submit any disclosure documents between at least 2005 and 2010, the SEC said. In addition, the school district executed a Certificate and Affidavit, claiming the 2007 OS did not contain any untrue statements.

City Securities helped draft and review the official statements for the 2005 and 2007 bonds.

"City Securities conducted inadequate due diligence and, as a result, failed to form a reasonable basis for believing in the truthfulness of material statements in an issuer's official statement," the SEC said. The firm offered and sold the 2007 bonds "on the basis of a materially misleading disclosure document," it said.

The SEC also charged the underwriter and Ruhl with failing to enact procedures or take reasonable

steps to ensure it would receive prompt notice of an issuer's failure to make the required disclosure submissions.

Ruhl was aware of Rule 15c2-12 … yet as supervisor of the department he failed to take reasonable steps to ensure that City Securities had reasonable compliance procedures and failed to provide any training to department employees regarding Rule 15c2-12." the SEC said. The firm's employees improperly relied solely on the issuer's assertions that it had complied with the rule.

City Securities violated the antifraud rules and the MSRB's Rule G-17 on fair dealing and that Ruhl aided and abetted the violations, the SEC said.

The firm and Ruhl also were charged with providing other issuers with improper gifts and gratuities and then treating those expenses as "miscellaneous" costs or costs related to "printing, preparation and distribution of official statement" to be taken out of issuance costs.

The gifts included: a $2,500 donation to a charity favored by an issuer; a $1,500 donation to an educational scholarship favored by an issuer; $1,000 to sponsor a golf outing sponsored by an issuer; $2,500 to sponsor an education foundation hosted by an issuer involving members of the Colts football team; 12 Chicago Whitesox tickets; and travel, hotel and entertainment expenses for issuers.

Ruhl "approved these reimbursement as a matter of course, without regard to limitations" in the MSRB's Rule G-20 on gifts and the firm's compliance manual. G-20 prohibits a dealer from giving any thing or service of value in excess of $100 per year to a non-employee in connection with muni business

The SEC said the improper gifts and reimbursement violated the antifraud laws and MSRB Rules G-17 and G-20 and that Ruhl aided and abetted the violations.

Both West Clark and City Securities agreed to cease and desist from further violations and take remedial actions. Neither admitted nor denied the charges.

City Securities agreed to pay almost $580,000 to settle the charges – a $300,000 fine and $279,446 of ill-gotten gains and prejudgment interest. Ruhl agreed to a penalty of $18,155 and disgorgement of $20,320 of ill-gotten gains. He also was permanently barred from serving in any supervisory capacity in the market and is subject to a one year bar for serving in other capacities, with the right to reapply.

by: LYNN HUME

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com