

Bond Case Briefs

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Commission Charges Operator of Miami-Dade County's Largest Hospital with Misleading Investors about Financial Condition.

The Commission today charged the operator of the largest hospital in Miami-Dade County with misleading investors about the extent of its deteriorating financial condition prior to an \$83 million bond offering.

An SEC investigation found that the Public Health Trust, which is the governing authority for Jackson Health System, misstated present and future revenues due to breakdowns in a new billing system that inaccurately recorded revenue and patient accounts receivable. The Public Health Trust projected a non-operating loss in the official statement accompanying the bond offering in August 2009, but reported a figure that was more than four times lower than what was ultimately reported at the end of the 2009 fiscal year. The Public Health Trust also failed to properly account for an adverse arbitration award, and misrepresented that its financial statements were prepared according to U.S. Generally Accepted Accounting Principles (GAAP).

The Public Health Trust has agreed to settle the SEC's charges.

"The Public Health Trust fell short in its obligation to maintain adequate accounting systems and controls that ensure truthful disclosures to investors about its financial condition," said Eric I. Bustillo, Director of the SEC's Miami Regional Office. "The Public Health Trust used stale numbers to calculate its revenue figures and lacked any reasonable basis for projecting losses that were far less than reality."

Mark Zehner, Deputy Chief of the SEC Enforcement Division's Municipal Securities and Public Pensions Unit, added, "Investors must be able to rely on the financial information accompanying municipal bond offerings. We will continue to scrutinize financial statements provided to investors and pursue municipal issuers who aren't providing accurate information to the public."

According to the SEC's order instituting settled administrative proceedings, the official statement accompanying the bond offering represented that the Public Health Trust (PHT) projected a \$56 million non-operating loss for its fiscal year ending Sept. 30, 2009. Several months after the bonds were sold, external auditors discovered problems with the PHT's patient accounts receivable valuation. This discovery required a large accounting adjustment to the reported net income, and the PHT ultimately reported a non-operating loss of \$244 million for fiscal year 2009 - more than four times the projection made to bond investors.

The SEC's order found that the PHT was aware of the rising level of patient accounts receivable and declining cash-on-hand prior to the bond offering, which caused concern among trustees and executive management. They raised questions about the accounts receivable amounts and collection rates that were used to calculate the PHT's revenue figures. The \$56 million non-operating loss amount included in the bond offering's official statement was generated by the budget department using stale cash collection numbers amid the known problems with the new billing system. The

budget department was not updating its collection rates in a timely fashion due to a lack of adequate communication among departments. Therefore, the PHT lacked a reasonable basis for its loss projection, and the official statement was materially misleading.

The SEC's order also found that the PHT failed to properly account for a December 2008 arbitration award that negatively impacted patient accounts receivable in its 2008 audited financial statements that were attached to the bond offering's official statement. The arbitration award required the PHT to pay a third-party receivables company \$3.9 million in cash, and transfer to the company \$360 million face amount of existing accounts receivable and \$250 million face amount of future accounts receivable. The PHT failed to perform an analysis to determine the value of the replacement accounts receivable awarded to the third-party company. The analysis is required under the relevant accounting standards in order to evaluate whether to accrue an expense related to the arbitration award or disclose the arbitration award in the notes to its financial statements. Without the proper analysis, the PHT failed to accurately account for the arbitration award in the audited financial statements.

The SEC's order directs the PHT to cease and desist from committing or causing any violations of Sections 17(a)(2) and (3) of the Securities Act of 1933. The PHT neither admitted nor denied the SEC's findings. The Commission determined not to impose a monetary penalty due to the PHT's current financial condition. The Commission also considered the PHT's cooperation with the investigation and the remedial measures undertaken.

The SEC's investigation, which is continuing, has been conducted in the Miami office by members of the Municipal Securities and Public Pensions Unit, including Brian P. Knight, Sean M. O'Neill, and Fernando Torres under the supervision of Jason R. Berkowitz. The investigation followed an examination conducted by Paul Anderson under the supervision of Nicholas A. Monaco and the oversight of John C. Mattimore. (Press Rel. 2013-181; Rel. 33-9450)