Bond Case Briefs

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Municipal bond offering cases have become an enforcement priority for the SEC. In recent months the Commission has brought a series of actions against the City of Miami, the West Clark City School District and others.

Now the agency has brought two proceedings related to bonds issued by a municipal corporation in Washington State. In the Matter of Greater Wenatchee Regional Events Center Public Facilities District, Adm. Proc. File No. 3-15602 (Nov. 5, 2013) and In the Matter of Piper Jaffrey & Co., Adm. Proc. File No. Nov. 5, 2013). The former names as Respondents: a municipal corporation formed by nine cities and counties to fund a Regional Center; Allison Williams, the Executive Services Director of Wenatchee, Washington who executed the closing certificate for the bond issue; Global Entertainment Corporation, the developer of the Regional Center; and Richard Kozuback, Global's CEO and President. The latter names as Respondents the underwriter of the bonds involved here and Jane Towery, a Managing Director at Piper.

The underlying facts trace to 2005 when Mr. Kozuback made several presentations regarding potential funding sources to develop a Regional Center to interested groups. The next year the City of Wenatchee, Washington, along with eight neighboring municipalities and counties, formed the District which in turn entered into a development contract with Global, although the firm had limited experience in the area.

Global developed a series of financial projections for the operation of the Regional Center over the course of project. The projections were prepared for the budget and inclusion in the District's Official Statement. After the initial projections were prepared in the summer of 2006, the City Council requested that in independent consultant review them. The consultant determined that the Regional Center might operate at a deficit and that its projected annual net operating income could be overstated by as about 16% to 25%. The next month the City entered into a contingent loan agreement which would provide financial support for all or part of the project if necessary. Construction began.

By early 2007 the facility had to be redesigned and reduced in size because of cost overruns and unexpected building costs. Global crafted new projections. Again, the City Council brought in a consultant. Again the Consultant raised questions about the projections although it concluded that the reduced project might be viable. In May 2007 the City Council voted to proceed with the Regional Center. Shortly thereafter the District authorized a lease agreement for the Center. Construction resumed.

By April 2008 Mr. Kozuback became concerned that sales of luxury seats were not proceeding as expected. Global provided new projections for the official bond statement which was in preparation.

Funds from the issuance needed to be available by the completion of the center in September 2008 for its acquisition by the District. Based on the projections, the underwriter advised that a bond

issuance might be difficult. The Mayor, who had cast a decisive vote at the City Council meeting which approved continuation, demanded that the projections be revised to be more optimistic. The revisions were made. The revised projections were included in the Official Statement without revealing the issues surrounding the revisions. The underwriter was unable to complete the financing.

Piper Jaffrey was retained in late 2008. The City and the District were searching for financing avenues. While various options were considered, the only viable one called for the issuance of short-term Bond Anticipation Notes or BANs that would mature two years later. The short term instruments would be refinanced through the issuance of long-term bonds. At the time the District and Mr. Williams knew that that if the revenue from the Regional Center was not adequate to support a bond issuance to repay the short term instruments the support of the City would be necessary. In the offering materials for the short term bonds a section discussing the constraints on the financial ability of the City to assist was deleted.

In 2011 the District defaulted on the outstanding $41.77 million short term BANs which had been issued. The State legislature then passed a sales tax to assist. In late September the District sold the long term bonds secured by the sale tax revenues to refinance the short term instruments.

Order alleges that the Official Statement for the short term instruments was false and misleading as was the certification of full disclosure. The papers did not adequately disclose the facts regarding the projections for the project and the limitations on the City finances, according to the Order. It alleges violations of Securities Act Sections 17(a)(2) and (3).

The Respondents in both proceedings settled. The District undertook to establish appropriate policies, procedures and internal control, institute training and certify completion of these steps to the Commission. It also consented to the entry of a cease and desist order based on Securities Act Section 17(a)(2) and a directive to implement the undertakings and pay a civil money penalty of $20,000. Ms. Williams and Mr. Kozuback both consented to the entry of cease and desist orders but based on Securities Act Section 17(a)(3) and will each pay a civil penalty of $10,000.

Piper revised its due diligence procedures and Ms. Towery agreed to implement undertakings which include limiting her activities as an associated person of a securities professional and to retain a consultant to review Piper’s municipal underwriting due diligence polices and procedures. In addition, the firm and Ms. Towery each consented to the entry of a cease and desist order based on the Sections cited in the Order and to a censure. The firm will pay a penalty of $300,000 while Ms. Towery will pay $25,000.

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