

Bond Case Briefs

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Wenatchee, Wash. Issuer, Others Settle SEC Arena Fraud Case.

The Greater Wenatchee, Wash., Regional Events Center Public Facilities District has agreed to pay \$20,000 — the first financial penalty the Securities and Exchange Commission has assessed against a municipal issuer — and take remedial actions to settle securities fraud charges that it misled bond investors.

The SEC announced the action on Tuesday. The sanctions revolve around \$41.77 million anticipation notes the district issued in 2008 to finance the construction of an events center and ice hockey arena. The BANs defaulted in 2011 but the default was later cured and the BANs were refunded with refunding bonds secured by sales tax revenues.

The case is notable not only for being the first instance of the SEC collecting a penalty assessed against an issuer, but also for the wide scope of transaction participants sanctioned.

Underwriter Piper Jaffray & Co. and its lead investment banker on the deal, Jane Towery, agreed to be censured and pay penalties of \$300,000 and \$25,000, respectively to settle charges. Towery also agreed to refrain for one year from any business contact with any existing or prospective municipal issuer client, as well as from speaking to issuer clients for the purpose of making due diligence decisions on behalf of a broker-dealer.

In addition, the developer, Global Entertainment, and its then-president and chief executive officer, Richard Kozuback, agreed to pay penalties of \$10,000 each. Allison Williams, a senior staff member of the district, who certified the accuracy of the official statement, consented to an order to cease and desist from further violations.

The SEC said the official statement for the bonds wrongly stated there had been no independent reviews of the financial projections for the center, when an independent consultant had actually examined the projections twice and questioned the economic viability of the project. The OS also failed to disclose that the financial projections were revised upward based on optimistic assurances by civic leaders that the community would support the project, the SEC alleged. In addition, the OS omitted key information about Wenatchee's remaining debt capacity of \$19.3 million, which would limit its ability to support any future long-term bonds, the SEC found.

"The respondents negligently failed to act with reasonable prudence in the issuance of the BANs," the SEC's order against the district, Global, Kozuback, and Williams concludes, noting that all parties knew about the debt capacity issue. "It was thus unreasonable for the district to issue the BANs, for Williams to sign the closing certificate of the district, and for Kozuback to sign the certificate of Global Entertainment Corporation."

The commission historically has been hesitant to impose financial penalties on municipal issuers because that would burden taxpayers, but SEC enforcement co-director Andrew Ceresney said that was not an issue in this case.

“Financial penalties against municipal issuers are appropriate for sanctioning and deterring misconduct when, as here, they can be paid from operating funds without directly impacting taxpayers,” Ceresney said. “This municipal issuer is paying an appropriate price for withholding negative information from its primary offering document and giving investors a false picture of the future performance of the project.”

Municipal issuers have previously agreed to settle SEC charges by disgorging ill-gotten gains, and the financial penalty the SEC is seeking against Miami, Fla. has not been paid because the city is contesting the SEC case at trial.

The SEC’s decision to charge Piper Jaffray, Global Entertainment, Kozuback, and Williams continues to reinforce the message that the commission will hold individuals accountable even if they are only negligent.

SEC chairman Mary Jo White said in an Oct. 9 speech that the commission’s enforcement arm would strive to be “everywhere,” and would take action even against even relatively minor fraudulent behavior. The SEC charged Miami’s former budget director in connection with its case against the city, but he, too, is fighting the charges.

The SEC order against Piper Jaffray takes the firm to task for failing to perform proper due diligence, which might have uncovered information important to investors.

“Piper and Towery conducted a cursory inquiry into the projections provided by Global, did not inquire about prior projections or revisions, and did not ask to see an independent consultant’s review of the projections despite being made aware of its existence, depriving BAN purchasers of material information relating to the revenue projections, the first source of payment for the majority of the BANs,” the order states.

Mark Zehner, deputy chief of the SEC enforcement division’s municipal securities and public pensions unit, said that as a result the firm could not be confident in the accuracy of the district’s offering documents.

“An underwriter’s due diligence obligation is critical, particularly when financing a startup revenue project,” Zehner said. “Piper Jaffray & Co. failed to develop a reasonable basis for believing the accuracy of key representations made in the official statement.”

The SEC’s order requires Piper Jaffray to retain an independent consultant to conduct a review of the firm’s muni underwriting due diligence policies and procedures as well as its supervisory policies and procedures relating to muni underwriting due diligence. The district also agreed to adopt written policies for disclosures in municipal offerings and continuing disclosure obligations, and to designate an individual responsible for ensuring compliance with those obligations. The respondents neither admitted nor denied the SEC’s findings.

Victor D. Vital, a lawyer with Greenberg Traurig in Dallas, who is representing Global Entertainment and Kozuback, said, “My clients neither admitted nor denied the allegations. They believe the resolution was a positive one for them.”

Other transaction participants and their lawyers could not be reached for comment.

BY KYLE GLAZIER

