Bond Case Briefs

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SEC Sanctions Muni Underwriter For Repeated Fraudulent Offerings.

Municipal bond offerings have, in recent years, become a staple of SEC enforcement. While the Commission has limited authority in the area, a series of actions have been brought under the fraud provisions. Likewise, the Commission has conducted a very successful initiative which encouraged those involved in the offerings to self-report in return for decreased sanctions.

The Commission's newest action in this area centers on a key provision in these offerings – the obligation to update the financial information in the offering materials. In the Matter of Lawson Financial Corporation, Adm. Proc. File No. 3-17901 (April 5, 2017).

Respondents in the proceeding are Lawson Financial, a registered broker dealer, and its founder, CEO and CCO, Robert Lawson. Since the firm was founded in 1984 it has conducted over 200 conduit municipal bond offerings. Between 2010 and 2014 the broker-dealer conducted 13 conduit offerings – those where a municipal entity serves as the issuer but the funds raised are passed to anounther who is obligated for the repayments. Those offerings were for the projects of Christopher Brogdon, who had been building nursing homes, assisted living facilities and retirement housing for twenty-five years using similar offerings.

During the underwriting process for the bonds, the underwriters are required to determine that an issuer or the person obligated has executed a Continuous Disclosure Agreement. That agreement provides that the obligated person on the bonds will provide annually financial information and event notices to the MSRB. That information gives brokers and dealers a reasonable basis on which to recommend the purchase of the bonds. The agreements in the Brogdon offerings were typically between the Bank of Oklahoma and the Brogdon-controlled borrowers.

In connection with the thirteen underwritings conducted during the four year period here Lawson Financial, through Mr. Lawson, and a person identified as Bank A – John T. Lynch, Jr. (see below) – were charged with conducting the appropriate due diligence on Mr. Brogdon and his offerings. They did not. Despite becoming aware of numerous red flags – the brokerage firm had no due diligence check list and virtually no relevant procedures — relating to the failures of the borrowers to comply with their Continuous Disclosure Agreements, the series of offerings continued.

For example, in 2010 the broker underwrote two Brogdon bond offerings. The brokerage firm and Banker A or Mr. Lynch assisted in preparing the draft official preliminary and final official statements. The final official statements included a summary description of the provisions in the Continuous Disclosure Agreement. Despite the fact that the borrower failed to comply with those obligations, the next offerings in the series proceeded with the pattern repeating over the period and throughout the offerings. The Order alleges violations of Securities Act Sections 17(a)(2) and (3) and Exchange Act Section 15(c).

To resolve the proceeding each Respondent consented to the entry of a cease and desist order based on the Sections cited in the Order. The firm also consented to the entry of a censure and Mr. Lawson

was barred from the securities business with a right to apply for re-entry after three years. Respondents will also, on a joint and several basis, pay disgorgement of $178,750 along with prejudgment interest. The broker will pay a civil penalty of $198,326.06. Mr. Lawson will pay a penalty of $80,000. The Commission may establish a fair fund. See also In the Matter of John T. Lynch, Jr., Adm. Proc. File No. 3-17902 (April 5, 2017)(proceeding naming as Respondent Banker A who supposedly served as underwriter's counsel during the offerings but in fact was an attorney but not a member of any bar; resolved with a cease and desist order based on Securities Act Sections 17(a)(2) and (3) and Exchange Act Sections 10(b) and 15(c), the payment of disgorgement of $20,000, prejudgment interest of $2,338 and a penalty of $22,338; he is also denied the privilege of appearing or practicing before the Commission as an attorney; further proceedings will be held to determine if a bar from the securities business is appropriate).

by Thomas Gorman | Dorsey & Whitney LLP

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