

Bond Case Briefs

Municipal Finance Law Since 1971

This Week In Securities Litigation - SEC Municipal Actions

The Commission filed actions against investment advisers or their associates this week involving: compliance issues tied to political intelligence regarding government agencies like CMS; another centered on the payment of excessive fees; and a third involving unauthorized transactions.

Municipal securities were also a focus this week. A series of actions were filed centered on the failure to comply with continuous disclosure obligations. Those obligations typically require the issuer to periodically update the financial information on bonds sold to the public.

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Breach of duty: In the Matter of Municipal Finance Services, Inc., Adm. Proc. File No. 3-18139 (August 24, 2017) is a proceeding which names as Respondents the firm, a registered municipal advisor, Rick Smith, the founder of the firm, and Jon Wolff, a vice president at the firm. The firm was an adviser to the City under a written agreement. Essentially, it advised the City on offerings. In May 2013 the City issued certain bonds that included a continuing disclosure agreement. At the time the City had three outstanding bond issues, each of which also had continuous disclosure agreements. The 2013 agreement amended the disclosure obligations for the prior offerings by extending the time in which to furnish the financial information by one year and in other ways that were inconsistent with the previously issued bonds. Respondents failed to advise the City about these points and did not submit the agreements to EMMA for three years. The Order alleges violations of Exchange Act Section 15B(c)(1). To resolve the proceeding the firm will implement an undertaking which includes an obligation to adopt appropriate policies and procedures. In addition, each Respondent consented to the entry of a cease and desist order based on the Section cited in the Order. The firm was censured and will pay a penalty of \$50,000. Each of the individual defendants agreed to pay a penalty of \$8,000.

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Municipal securities/disclosure: SEC v. Kapanicas, Civil Action No. 5:17-cv-01704 (C.D. Cal. Filed August 23, 2017) is an action against Alan Kapanicas, the former executive director of the Beaumont Financing Authority which issued about \$260 million in municipal bonds in 24 separate offerings from 2003 through 2013. For each offering the City of Beaumont, California agreed to provide investors with annual continuing disclosures. From at least 2004 through April 2013 the City failed to comply with this obligation. In offerings in 2012 and 2013 the City failed to disclose its poor financial condition. This made the bonds appear more attractive, misleading investors. The complaint alleged violations of Securities Act Sections 17(a)(2) and (3). Mr. Kapanicas resolved the action, consenting to the entry of a permanent injunction based on the Sections cited in the complaint. He also agreed to pay a penalty of \$37,000. See Lit. Rel. No. 23920 (Aug. 24, 2017); *see also In the Matter of Beaumont Financing Authority*, Adm. Proc. File No. 3-18132 (August 23, 2017)(related action against the Financing Authority based on essentially the same facts; resolved with a series of undertakings and a cease and desist order based on Securities Act Sections 17(a)(2) and (3)); *In the Matter of O'Connor & Company Securities, Inc.*, Adm. Proc. File No. 3-1131 (August 23 2017)(action based on same facts as above naming underwriter and a registered representative

at the firm, Michael Wetherbee as Respondents; resolved with a cease and desist order based on Securities Act Sections 17(a)(2) and (3) and Exchange Act Section 15B(c)(1) and a censure of the firm which will pay a penalty of \$150,000; Mr. Wetherbee is suspended from the securities industry, from serving in a supervisory capacity and from participating in a penny stock offering for six months; he will pay a penalty of \$15,000).

by Thomas Gorman

August 25, 2017

Dorsey & Whitney LLP

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