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## Oyster Bay SEC Settlement Allows Borrowing Without Credit Rating Damage.

**The settlement over securities fraud allegations requires a monitor for the town's securities disclosures, but allows it to continue, which works in the town's favor, experts said.**

Oyster Bay's proposed settlement with the Securities and Exchange Commission in a lawsuit accusing it of fraud related to concessionaire loan guarantees allows the town to keep borrowing, municipal finance experts said.

The town board last month agreed to settle the case and is looking to move on, officials said. The settlement must still be approved by a judge.

"They got a good deal in [the] settlement that allows the town to go forward, and the SEC got its case out there," Christine Chung, co-director of the Institute for Financial Market Regulation at Albany Law School, said. "You only litigate if you think the SEC can't prove it or if you think you'll get a better deal."

The federal agency responsible for overseeing securities markets sued Oyster Bay and former Town Supervisor John Venditto in November 2017, alleging securities fraud over the town's failure to disclose disputed indirect loan guarantees to concessionaire Harendra Singh in its bond offering documents and making misleading statements about those guarantees when the town disclosed them. The lawsuit noted that Venditto invoked his Fifth Amendment right against self-incrimination when he was interviewed by SEC attorneys. The SEC and federal prosecutors alleged the town backed about \$20 million in loans to creditors on behalf of Singh.

The SEC had sought an unspecified fine and a court-appointed overseer for five years with the power to block the town's borrowing. The proposed settlement imposed no fine and a court-appointed consultant is to have a limited advisory role for three years.

"The settlement doesn't reflect a weakness [in the SEC's case]," Chung said. "It just reflects sort of the reality of what's the better outcome."

A court-appointed overseer that could have blocked borrowing would have been a credit risk for the town.

"Had Oyster Bay been restricted from issuing notes or had there been any problems in doing so, this would have been a very major risk for them," Moody's Investors Service analyst Douglas Goldmacher said. "It could have made it more difficult for them to carry out their regular functions as a municipality."

The agreed-to court-appointed consultant in an advisory role and making recommendations could be a positive, Goldmacher said.

“An extra set of eyes to go through and make sure that all the disclosure is properly in order definitely cannot hurt and has the potential to help,” he said.

Town Attorney Joseph Nocella said the town settled after “the parties finally came to an agreement that both could live with.”

In a Feb. 21 memo, Nocella said the consultant would increase investor confidence in the town’s bonds, which would “only further enhance the town’s already improving bond rating.”

Goldmacher said Moody’s is “quite comfortable where the rating is currently” at Baa3, its lowest investment grade rating.

The town has spent more than \$5 million on legal fees related to the concessions investigations and civil lawsuits brought by the SEC and Singh’s creditors since 2015.

While the legal fees are more than several recent fines that the SEC obtained against municipal bond issuers — in 2016, the city of Miami agreed to a \$1 million SEC fine, and in 2017, the Port Authority of New York and New Jersey agreed to pay \$400,000 to settle a bond disclosure cases — a fine and a consultant who could halt borrowing would have had market consequences.

“They could have a drag on their ability to access markets on favorable terms going forward more so than the one time payment of legal fees,” Chung said.

Before the SEC filed its lawsuit, the town tried to stave off any enforcement action, arguing in 2017 to the commission that the town couldn’t have disclosed some of the loan guarantees because it hadn’t known about them, claiming all but one had been concealed by a single rogue deputy town attorney.

That argument fell with the testimony of former Town Attorney Leonard Genova last year during the federal corruption trial against Venditto and former Nassau County Executive Edward Mangano and his wife, Linda. Venditto was acquitted on corruption-related charges in that trial while a mistrial was declared in the Mangano case.

Mangano was convicted of conspiracy to commit federal program bribery, federal program bribery, conspiracy to commit honest services wire fraud, honest services wire fraud and conspiracy to obstruct justice in a second trial earlier this year. Linda Mangano was found guilty of conspiracy to obstruct justice, obstruction of justice and two counts of lying to the FBI.

The first indirect loan guarantee to Singh’s creditors in 2010 for a \$1.5 million line of credit, which town officials have said was legitimate, wasn’t disclosed in bond offerings.

Genova, who received immunity from criminal prosecution in return for his testimony, testified some of the disclosures were intentionally misleading.

“We had access to the information,” Genova testified last year, referring to bond disclosures in 2015, after the FBI had started investigating the transactions with Singh. “We chose not to include it at that point.”

Genova testified that a 2012 bond document “was not accurate, and it did omit a material fact ... liabilities with the loans that were backed for Mr. Singh.”

The town’s settlement doesn’t include Venditto.

“Mr. Venditto maintains he didn’t do anything wrong in the civil realm just like the criminal realm,” Venditto’s attorney Marc Agnifilo said. His client was “essentially a victim of this fraud,” he said.

“If the SEC will agree to something like that [the settlement with the town] and agree he doesn’t have to pay any money, there’s the possibility we’d settle the civil case,” Agnifilo said.

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By Ted Phillips

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