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Which Side Are You On? Municipal Broker/Dealer Takes Both Sides.

On Aug. 26, 2021, the U.S. Securities and Exchange Commission ("SEC") instituted enforcement proceedings against Rush F. Harding III, the 65-year-old co-founder of Crews & Associates, Inc. ("Crews"), a Little Rock, Arkansas, broker/dealer and municipal advisor, and against Crews for unfair dealings in the bonds of Ohio County, West Virginia. County offices are in Wheeling, West Virginia. In 2006 the County issued $81 million of bonds bearing interest at 8.25%, and which had a make-whole provision, making calling them prohibitively expensive. In 2007 Crews began a business relationship with the County, and by 2015 had underwritten nine bond offerings for the County.

Municipal Broker
Harding, on behalf of Crews, organized two tender offers (in 2012 and 2014) to purchase the outstanding 2006 bonds, as market interest rates had fallen significantly since 2006, making an offer at a price higher than the market for the 2006 bonds, an attractive way for the County to reduce its debt service costs. The County funded the buybacks by issuing new lower interest rate bonds underwritten by Crews. Crews then purchased approximately $1 million of the 2006 bonds on the open market at 106.69% of par. It then sold those bonds to two Crews customers.

In 2015 Crews again bid on the 2006 bonds, buying $3.12 million at 107.2% of par, $2.5 million of which it sold to a Crews affiliate of which Harding was also the CEO. The County did not in any of these transactions retain a municipal advisor to represent its interests, "relying instead (per the SEC) on its relationship with, and the expertise of, Crews."

As required by Municipal Securities Rulemaking Board ("MSRB") Rule G-17, on Dec. 14, 2015, Crews sent the County a disclosure letter that documented the relationship between Crews and the County and acknowledged its obligations to deal fairly with the County. That letter asserted that it "had not identified any potential or actual material conflicts that required disclosure." Crews did not disclose that it had acquired through its affiliate $2.5 million of the 2006 bonds. Before the tender offer urged by Crews, Crews continued to purchase 2006 bonds for the affiliate.

Dealer Takes Both Sides
In December 2015, the tender offer was priced at 110% of par. When the tender closed in February 2016, the affiliate tendered 71% of the 2006 bonds tendered to the County. The SEC noted that the tender resulted in "significant savings" for the County. In connection with the tender, the SEC also found that Harding and Crews violated MSRB Rule G-27 for failing to have adequate supervisory systems. Crews made a net profit of $34,631; Harding was paid $36,524 in commissions; and the affiliate made a net profit of $27,153.

Harding and Crews consented to the entry of the SEC enforcement proceedings. As a result, Harding was censured and ordered to pay disgorgement of $36,524, as well as a civil penalty of $100,000. Crews was also censured, ordered to disgorge $44,072, and ordered to pay a civil penalty of $200,000. Ohio County and the rest of the capital markets might benefit not only from considering the way in which it and its tax-paying citizens were victims, but also from considering the frequency

of abuses in the offering of municipal securities. See my Sept. 29, 2020 Blog “What if the Advice is Suspect? Municipal Securities Advisor Registration and Dereliction.”

Thursday, September 2, 2021

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