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SEC Charges PNC in Latest Limited Offering Disclosure Action.

PNC Capital Markets (PNC) has been added to the newly-formed list of underwriters who failed to meet the exemption requirements in connection with 36 limited offerings in violation of Securities and Exchange Commission Rule 15c2-12 and Municipal Securities Rulemaking Board Rule G-27 on supervision.

Without admitting or denying the findings, PNC agreed to be censured and pay disgorgement of \$81,362, prejudgment interest of \$16,961 as well as a civil money penalty of \$100,000. The administrative action comes just over three months after the SEC filed litigation against Oppenheimer & Co., in addition to three separate administrative settlements against BNY Mellon Capital Markets, TD Securities and Jefferies for failing to comply with municipal bond offering disclosure requirements in connection with limited offerings.

Those actions were the first time the Commission had ever charged underwriters in such fashion, and the swift follow-up suggests this has been an area of focus for the SEC's public finance enforcement team. All underwriters charged for failing to comply with the limited offering exemption allegedly violated SEC Rule 15c2-12, which generally requires underwriters to obtain disclosure documents from issuers and to reasonably determine that the issuer is able to provide certain information on a continuing basis to the MSRB.

But the rule contains an exemption from those requirements for municipal securities issuances in denominations of \$100,000 or more sold to no more than 35 persons if the underwriter reasonably believes the purchaser is capable of evaluating the merits of the investment as well as if the purchaser is not doing so for more than one account with a view to distribute.

"From at least March 2018 through November 2021, PNC acted as sole underwriter for at least 36 offerings of municipal securities where it sought to rely on the exemption provided in Exchange Act 15c2-12(d)(1)(i), but where the offerings did not actually satisfy the exemption's requirements," the complaint said. "PNC did not provide investors in these securities with copies of any preliminary official statement or final official statement for the securities, or determine that a continuing disclosure undertaking has been entered into by the issuer, or an obligated person, as required by Exchange Act Rule 15c2-12(b)."

With these 36 limited offerings, PNC sold the bonds to broker-dealers and/or investment advisors with separately managed accounts and when the sale occurred, PNC did not have a reasonable belief that the broker-dealers and investment advisors were purchasing the bonds for investments as required under Exchange Act Rule 15c2-12(d)(1)(i).

PNC did not inquire further as to whether the brokers were purchasing the securities for more than one account or for distribution and failed to ascertain for whom the bonds were purchased.

"PNC was therefore unable to form a reasonable belief that the broker-dealers and investment advisors were purchasing the securities for investors who possessed the necessary knowledge and

experience to evaluate the investments,” the complaint said. “As a result, these 36 limited offerings did not qualify for the exemption under Exchange Act Rule 15c2-12(d)(1)(i).”

The SEC also found that the firm failed to consistently follow or enforce its own policies, which required that each municipal primary offering be evaluated to determine whether it was exempt from the rule, and maintain documentation and evidence that the exemption was met. The failure to do was a violation of the MSRB’s supervisory rule, which requires that firms “adopt, maintain, and enforce” procedures “reasonably designed” to ensure compliance with all applicable laws and rules, the SEC found.

PNC did not immediately respond to a request for comment.

By Connor Hussey

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