

INSIGHTS

Municipal Advisor, School Consultant, and Associated Individuals Enter Settlement Offers with SEC after First-of-Its-Kind Municipal Advisor Antifraud Enforcement Action

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On June 13, 2016, the Securities and Exchange Commission (SEC) accepted the settlement offers made by two firms and three executives charged with using deceptive business practices in dealing with five school districts.¹ As part of their settlements, School Business Consulting, Inc. (SBCI), SBCI's principal Terrance Bradley, Keygent LLC, and Keygent's associated individuals Anthony Hsieh and Chet Wang agreed to cease-and-desist from any further commission or facilitation of violations of certain provisions of the Securities Exchange Act and MSRB Rule G-17, censure, issue notices of the order to all existing clients and prospective clients, and pay monetary penalties. Further, Bradley was barred from association with any SEC-regulated entity. All respondents settled without admitting or denying the SEC's allegations.

SBCI is a consulting group for school districts on financial and budget matters, often providing them with guidance when they seek to hire municipal advisors. Keygent is a registered municipal advisor that focuses on advising school districts and community colleges that issue bonds. Keygent analyzes outstanding bond and debt information to identify prospective school district clients and traditionally submitted unsolicited proposals aiming to refinance school district debt in order to attract new business. At issue in the case were five contracts for municipal advisor services between Keygent and California school districts, which SBCI assisted Keygent in obtaining.

After investigation, the SEC accepted offers of settlement from the entities and associated individuals under the municipal advisor antifraud provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Section 15B(a)(5) of the Exchange Act.² This action marks the first time the SEC has enforced that provision. The SEC also alleged violations of Section 15B(c)(1) of the Exchange Act and MSRB Rule G-17. Further, the SEC alleged that SBCI violated Section 15B(a)(1)(B) by failing to register as a municipal advisor, and that Bradley caused SBCI's violation.

Background

In 2010, Keygent contracted with SBCI and Bradley to serve on the Keygent Advisory Board. Bradley served for 26 years in the California public school system, including seven years as a superintendent, before starting his own consulting practice, SBCI, which provided services to

school districts. SBCI provided consulting services to the five school districts referenced in the SEC's cease-and-desist orders, and often helped the districts select municipal advisors. In all, Bradley helped school districts draft the Request For Qualifications (RFQ) document often used to solicit municipal advisor proposals when a school district puts their business up for bidding, draft the interview questions used to rank potential MA candidates, and at times participated in the interviews to help select the winning MA proposal.

Keygent and SBCI entered into an agreement pursuant to which SBCI through Bradley would serve on Keygent's Advisory Board and would be responsible for advising Keygent senior staff on "strategy, new business, development, public policy and research."³ In turn, Keygent hoped that Bradley would introduce Keygent to SBCI clients and give Keygent an advantage in the bidding process once it submitted proposals. When Bradley solicited clients for the Keygent he verbally advised school officials of his relationship with Keygent and formally recused himself from the formal interview process.

However, when submitting proposals to the five school districts involved in this matter, SBCI helped Keygent prepare its proposal materials despite a bidding mandate that MA candidates restrict their communications to a specified contact listed on the RFQ. SBCI also shared interview questions and confidential information about competitor proposals and fee structures exclusively with Keygent without the school districts' permission. All five school districts ultimately hired Keygent as their municipal advisor. Keygent, Hsieh, and Wang were aware that Bradley was providing them with information to which they would otherwise not be entitled.

Enforcement Action and Settlement

SBCI registered with the SEC as a municipal advisor and soliciting municipal advisor under the temporary registration rules, but it did not register under the final registration rule, and has never registered with the MSRB. The SEC determined that SBCI was acting as a municipal advisor under Section 15B(e)(9) of the Exchange Act because it was engaged in the "solicitation of a municipal entity," given it received direct compensation from Keygent in exchange for soliciting school districts in the bidding process for the "purpose of obtaining an engagement [for Keygent] in connection with the issuance of municipal securities."⁴

Pursuant to Section 15B(c)(1) of the Exchange Act, Keygent and SBCI, as municipal advisors, were subject to a fiduciary duty to their municipal entity clients, and were therefore prohibited from engaging in any act, practice, or course of business that was not consistent with their fiduciary duty. The SEC charged SBCI and Bradley with violating their fiduciary duty under Section 15B(c)(1). Further, the SEC charged SBCI and Bradley with violation of Section 15B(a)(5) of the Exchange Act for engaging in fraudulent, deceptive, and manipulative acts while undertaking the solicitation of a school district; violation of MSRB Rule G-17 for dealing unfairly and engaging in deceptive, dishonest, and unfair practices as a municipal adviser; and consequently violating Section 15B(c)(1) because this section requires all advisors to act in accordance with all MSRB rules when soliciting or giving advice to a municipal entity. SBCI was also charged with violation of Section 15B(a)(1)(B) of the Exchange Act for acting without registering as a municipal advisor, and Bradley with causing SBCI's violation of 15B(a)(1)(B).

The SEC charged Keygent and Hsieh with violation of their fiduciary duty under Section 15B(c)(1) and MSRB Rule G-17. Hsieh and Wang were charged with causing Keygent's violations. Keygent, Hsieh, and Wang were also found of have caused SBCI's and Bradley's

violations of the Exchange Act and Rule G-17.

Upon reaching a settlement, Bradley agreed to cease and desist from committing or causing any violations or future violations of Section 15B(a)(1)(B), 15B(a)(5), and 15B(c)(1), and MSRB Rule G-17; is barred from association with any broker, dealer, investment advisor, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; is prohibited from serving or acting as an employee officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and must pay a \$20,000 civil money penalty. SBCI agreed to cease and desist from committing or causing any violations of the same securities provisions, accept censure, and pay a \$30,000 civil money penalty.

Keygent was ordered to cease and desist from committing or causing any violations and any future violations of Section 15B(a)(5) and 15B(c)(1) of the Exchange Act, and MSRB Rule G-17, is censured, and must pay a \$30,000 civil money penalty. Hsieh and Wang are also subject to the cease-and-desist orders and must pay civil money penalties, \$30,000 and \$20,000 respectively. In addition, all respondents entered into undertakings requiring notification of clients and potential clients of this Order.

Implications

The SBCI and Keygent enforcement orders represent the first time the SEC has enforced the municipal advisor antifraud provisions of the Dodd-Frank Act. According to Andrew Ceresney, Director of the SEC Enforcement Division, the agency intends to use this statute to prevent the unauthorized exchange of confidential information and subsequent improper advantage that results in the municipal contract bidding process.⁵ The imposition on Bradley of an industry bar sends a particularly strong signal to this class of newly regulated entities and individuals. Overall, the SBCI and Keygent settlement orders demonstrate the SEC's willingness to flex this muscle and seek monetary remedies and injunctive relief to ensure municipal advisors and their associated persons act consistently with their fiduciary duty towards their municipal entity clients.

For more information regarding municipal advisor antifraud provisions and their impact on specific situations, please contact [Britt Steckman](#).

¹ Order Instituting Administrative and Cease-and-Desist Proceedings, *In the Matter of School Business Consulting, Inc. and Terrance Bradley*, Exchange Act Release No. 78054 (June 13, 2016); Order Instituting Administrative and Cease-and-Desist Proceedings, *In the Matter of Keygent LLC, Anthony Hsieh, and Chet Wang*, Exchange Act Release No. 78053 (June 13, 2016).

² *Supra* n.1, citing § 15B(a)(5) which provides: "No municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in connection with which such municipal advisor engages in any fraudulent, deceptive, or manipulative act or practice."

³ *In re School Business Consulting, Inc. and Terrance Bradley.*

⁴ *Id.*

⁵ SEC Press Release 2016-118, available at <https://www.sec.gov/news/pressrelease/2016-118.html>.