

INSIGHTS

SEC Charges Texas-Based Municipal Advisor with Fraud and Breach of Fiduciary Duty

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On May 9, 2018, the U.S. Securities and Exchange Commission ("SEC") announced it charged a registered municipal advisor (the "MA Firm") and its owner (the "MA Owner") with defrauding their client, a Texas school district, in connection with multiple municipal bond offerings. This enforcement action brings attention to the obligations and duties that municipal advisors have to their clients and serves as a reminder that the SEC continues to pursue enforcement actions in the area of public finance, including in the State of Texas.

The SEC's Order states that in connection with three municipal bond offerings the MA Owner and his wholly-owned MA Firm misrepresented their municipal advisory experience and failed to disclose to the school district that the MA Owner was employed by the attorneys who served as bond counsel for all three bond offerings. Specifically, the SEC stated that, in an attempt to gain municipal advisory clients, the MA Owner drafted and circulated a brochure to the school district and municipalities to market the MA Firm's municipal advisor experience. The SEC order states that the brochure created the misleading impression that the MA Owner and MA Firm had served as a municipal advisor on numerous municipal bond issuances and failed to disclose that the MA Owner had a financial interest in the school district's offerings.

By misrepresenting their municipal finance experience and failing to disclose the conflict of interest, the SEC concluded that:

- The MA Firm violated and the MA Owner willfully violated Section 15B(a)(5) of the Securities Exchange Act of 1934, which prohibits any fraudulent, deceptive, or manipulative act or practice while providing advice to a municipal entity with respect to municipal financial products [or] the issuance of municipal securities;
- The MA Firm breached and the MA Owner willfully breached their respective fiduciary duty to the school district, as set forth in Section 15B(c)(1) of the Exchange Act; and
- The MA Firm and the MA Owner failed to deal fairly with the school district in violation of Municipal Securities Rulemaking Board Rule G-17.

The MA Firm and the MA Owner consented to the Order and are jointly and severally liable for paying \$362,606 in disgorgement and \$19,514 in prejudgment interest. The MA Firm was also assessed a civil penalty of \$160,000 while the MA Owner was assessed a civil penalty of \$20,000. The MA Owner was also barred from association with various regulated entities, including municipal advisors.

A copy of the Order may be found [here](#).

For More Information: Our team helps clients manage the full range of legal and compliance issues facing public finance professionals. Our attorneys have experience inside government, both developing the regulatory framework for the public finance market and enforcing securities laws. Should you require additional information, please contact [Paul Maco](#), [Ed Fierro](#) or [Britt Steckman](#).