

INSIGHTS

## SEC Revokes Firm Registration and Bars Municipal Advisor Following Court Sanctions

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On June 29, 2018 Judge Halil Suleyman Ozerden of the Southern District of Mississippi entered judgments against Malachi Financial Products, Inc., and its president and sole shareholder, Porter B. Bingham, for alleged violations of the Securities Exchange Act of 1934 (“Exchange Act”) and Municipal Securities Rulemaking Board (“MSRB”) Rule G-17. The judgments were entered in accordance with a consent agreement signed by the Securities and Exchange Commission (“SEC”), Bingham, and Malachi. Without confirming or denying the allegations, Bingham and Malachi agreed to: (1) being permanently enjoined from further violations of Sections 15B(a)(5) and 15B(c)(1) of the Exchange Act and MSRB Rule G-17, (2) pay a joint and several disgorgement of \$33,000 plus \$2,858 of prejudgment interest, and (3) pay civil penalties of \$50,000 for Malachi and \$25,000 for Bingham.

Subsequently, and citing to these final judgments, the SEC acted on July 9, 2018 to revoke Malachi’s registration as a municipal advisor and to bar Bingham from association with any “broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.” This agency action effectively prohibits Malachi from engaging in municipal advisory activities and bars Bingham from engaging in activities that are regulated by the SEC. The combination of penalties sought and ultimately enforced by the SEC highlights its continuing focus on enforcing federal securities laws as they relate to municipal advisors.

According to the complaint filed by the SEC on January 2, 2018, these violations arise out of actions relating to Rolling Fork, Mississippi’s (the “City”) municipal bond offering in 2015 to fund certain improvement projects, such as paving streets and constructing a municipal swimming pool. In January 2015, the City hired Malachi as the municipal advisor for the proposed bond offering under an “Agreement for Professional Financial Advisory Services” (“MA Agreement”). Bingham, as Malachi’s president and sole principal, signed the MA Agreement on behalf of Malachi.

The complaint alleges that in May 2015, Bingham accepted two payments totaling \$2,500 from a registered representative who was associated with a broker-dealer and municipal securities dealer. Approximately two weeks after receiving those payments, a Malachi employee recommended that the City hire the registered representative and his firm to underwrite the bond offering. Neither Bingham nor the registered representative disclosed the payments or the resulting conflicts of interest to the City. Under the terms of the MA Agreement, Malachi was to be paid an amount not to exceed 2% of the debt issuance. While the City’s Offering was

originally contemplated to be for \$2 million, statutory offering limits required reduction of the offering to \$1.1 million and, pursuant to the 2% cap, Malachi's compensation was reduced from \$40,000 to \$22,000.

As alleged, Malachi and Bingham attempted to recoup this lost revenue by fraudulently charging the City for purported "additional services" that they did not actually provide. The day after the Offering closed, Bingham directed Malachi's employee to prepare and send two invoices totaling \$55,000 to the bond trustee for payment. One invoice was for \$22,000, which was Malachi's contractual fee for the municipal advisory services provided to Rolling Fork (2% of the \$1.1 million issuance). The other invoice was for \$33,000 and, according to the invoice, was purportedly for services related to the "investment of bond proceeds." This invoice, the complaint states, was false and fraudulent and was not authorized or agreed to by the City. Although addressed to the City's Mayor, Malachi only transmitted them to the bond trustee and never sent them to the Mayor or the City. As a result, the bond trustee paid the full \$55,000 to Malachi before the City became aware of the invoices.

Malachi allegedly provided no services relating to the investment of bond proceeds to the City and the bond proceeds had not, in fact, been invested by the time of the second invoice. Neither Bingham nor Malachi had any documentation reflecting any investment services they purportedly provided the City in connection with the proceeds from the Offering. Although Malachi and Bingham may have also created some post-bond issuance compliance policies for the City and examined the City tax rolls to determine the City's legal lending limit, the complaint asserts neither of those services, even if provided, justified the \$33,000 invoice. Rather, the post-issuance compliance policies purportedly created for the City contained nothing but standard boilerplate language, much of which can be found by doing a cursory internet search. As such, it would have been unreasonable to bill the City \$33,000 for preparing these policies. More importantly, as the complaint notes, Malachi and Bingham never provided those written policies to the City.

The SEC orders barring Bingham and revoking Malachi's registration as a municipal advisor can be found [here](#) and [here](#).

Should you have any questions about SEC, DOJ, FINRA or other governmental enforcement issues, please reach out to Paul Maco, Ed Fierro or Britt Steckman.