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West Clark Community Schools Cease and Desist Order—SEC Enforcement of Rule 15c2-12
July 29, 2013

On July 29, 2013, the SEC entered a pair of Cease and Desist Orders against West Clark Community Schools (the "School District") and Citi Securities, the underwriter of certain municipal bonds issued by the School District (the "Underwriter"). The School District is located in Indiana and has approximately 4,500 students and is governed by a five-member Board of School Trustees (the "School Board"). The Underwriter is a small regional underwriter which was principally involved in underwriting Indiana bond offerings. In 2005, the School District sold $52 million of municipal bonds to the Underwriter. As part of the offering, the School District executed a continuing disclosure agreement (a "CDA") pursuant to SEC Rule 15c2-12 (the "Rule") under which the School District agreed to provide certain financial information and operating data on an annual basis, as well as timely notice of certain specified events as required by the Rule. In December 2007, the School District sold $31 million of additional bonds to the Underwriter. In the Official Statement for the 2007 offering, the School District stated that it had never failed to comply in any material respect with any previous undertaking entered into pursuant to the Rule. In addition, the School District executed a standard Rule 10b-5 certificate stating that the 2007 Official Statement did not contain any untrue statement of a material fact. In fact, the School District had never made any of the continuing disclosure filings which it had agreed to make in the CDA.

The SEC concluded in its Order relating to the School District that the School District had violated, among other things, Rule 10b-5 by making a false statement regarding its compliance with the CDA. The School District was required by the SEC to enter into certain undertakings under which it agreed to ensure that all required disclosures were made and to adopt written disclosure policies and procedures to ensure that filings would be made in the future.

In the separate Cease and Desist Order relating to the Underwriter, the SEC noted that the Underwriter, by not checking the School District's compliance with the CDA, had failed in its obligation to have a reasonable belief in the accuracy of the School District's statements in the 2007 Official Statement. In addition, the SEC found that the Underwriter on other offerings had mischaracterized certain expenses, such as charitable

donations and entertainment expenses, and then charged those expenses and other miscellaneous costs back to various municipal issuers as costs of "printing, preparation and distribution of official statements" without the issuers' knowledge. The SEC also found that the Underwriter had provided improper gifts and gratuities to personnel of certain municipal issuers, including multi-day out-of-state golf trips and tickets to multiple sporting events in violation of MSRB Rule G-20. The SEC concluded in the Order that the Underwriter had willfully violated, among other things, Rules 10b-5 and 15c2-12 as well as MSRB Rules G-17 and G-20 as a result of failing to properly investigate whether the issuer had made the required 15c2-12 filings and making improper payments which were mischaracterized as expenses. As a result of this conduct, the SEC required the Underwriter to disgorge approximately $300,000 of profits and pay a fine of an additional $300,000. In the Order as to the Underwriter, the SEC also suspended the supervisor of the Underwriter's public finance department who was aware of the improper payments and expenses for at least a year, and banned him for life from having a supervisory position in an underwriting firm.

These actions by the SEC represent a significant move by the SEC to enforce the provisions of the Rule against both issuers and underwriters. In particular, this action clarifies that making statements about compliance with the Rule in an official statement which are not true is a misstatement of a material fact and a violation of Rule 10b-5 by the issuer. The Orders demonstrate the SEC's position that an underwriter may not simply rely upon assertions by the issuer about compliance with the Rule and must independently verify compliance by the issuer with the Rule as a part of its diligence inquiry. Finally, the Order against the Underwriter further indicates the SEC's concern about payment of improper payments and expenses by underwriters with respect to municipal issuers.

In the event that you have any questions regarding either of these actions or would like to discuss the implications of these actions to either issuers or underwriters, please contact one of us.

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