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# What Harrisburg Did Wrong

Earlier this month the Securities and Exchange Commission (the "SEC") imposed a "Cease-and-Desist" Order (the “SEC Order”) against the City of Harrisburg, Pennsylvania (the "City").[1] The Order charged the City with violating SEC rules in connection with various misrepresentations and omissions in public statements and financial reports of the City. These misrepresentations and omissions were found to have occurred between January of 2009 and March of 2011. It was during this time period that the City also failed to comply with its obligations under certain Continuing Disclosure Certificates (the “Certificates”) executed in connection with the offering of certain municipal securities, including the City’s guarantee of approximately $260 million of debt for upgrades to a building owned by The Harrisburg Authority. As of March 2013, the City had withheld roughly $13.9 million in general obligation debt service payments to meet its cash flow needs for essential services, in a financial crisis which had resulted in the City being placed under Pennsylvania state receivership.

Although the City agreed in the Certificates to supply certain ongoing financial information and notices for the benefit of the various bondholders, during the time period in question, the City failed to submit annual financial information, audited financial statements, notices of failure to provide required annual financial information and notices of material events. The information available to investors became incomplete and outdated. According to the SEC, as a result of these failures, investors and trading markets were forced to look elsewhere for information on the City’s financial condition, including public statements made by the City through its website. Such public statements on the City’s website included the City’s 2009 Budget and Transmittal Letter, the 2009 State of the City Address and a Mid-Year Fiscal Report for 2009, all of which the SEC found to misstate and/or omit to disclose material information on Harrisburg’s financial condition and credit ratings. The State of the City address specifically referred to the guarantee of The Harrisburg Authority’s debt as an "additional challenge" and an "issue that can be resolved."[2]

The SEC Order sets forth that "municipal issuers have an obligation to make sure that information that is released to the public that is reasonably expected to reach investors and the trading markets, even if not specifically published for that purpose, does not violate the anti-fraud provisions." The SEC found that the public statements made by the City on its website, including traditionally politically-inclined speeches such as the State of the City speech, could reasonably be expected to reach investors, and as result the City violated SEC anti-fraud provisions through making material misstatements and omitting to state certain information regarding its credit rating and financial condition. According to Elaine Greenberg, chief of the SEC’s enforcement division’s

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[1] The SEC report, in its entirety, can be found at [www.sec.gov/litigation/admin/2013/34-69515.pdf](www.sec.gov/litigation/admin/2013/34-69515.pdf).
[2] Glazier, *Harrisburg Charged By SEC*, The Bond Buyer (May 7, 2013), 1.

municipal securities and public pensions unit, "Because of Harrisburg's misrepresentations, secondary market investors made trading decisions based on inaccurate and stale information."[3]

The SEC chose not to proceed against any individuals or levy any monetary penalties or fines on the City or its officers. While the City consented to the SEC Order, it neither admitted nor denied the findings of the SEC.

*Important Points for Issuers to Learn from the SEC Order*

In deciding not seek further action against the City, the SEC notes the remedial action taken by the City to correct its mistakes and violations once its investigation began. Issuers of municipal securities should be aware of the actions taken by the City and in many circumstances, would benefit from implementing similar steps themselves, if such measures are not already in place. In a section of the SEC Order entitled "Harrisburg Enhances Its Disclosure Process," the SEC notes that during the time period it found the City to be in violation, the City did not have any policies or procedures in place to ensure the information it was releasing to the public was accurate or to ensure compliance with its various Continuing Disclosure Certificates after the issuance of the related securities. As a result of the investigation, the City took steps to enhance its disclosure process through instituting formal written policies and procedures with respect to public statements including financial information, and also with respect to post-issuance compliance with its various Certificates. These policies and procedures designated specific individuals responsible for certain actions, such as submitting financial information to the Electronic Municipal Market Access ("EMMA") system. The City also designed and implemented annual training for its employees involved in the disclosure process to ensure compliance with these new policies and procedures.

The SEC Order highlights the importance of certain actions to issuers of municipal securities, including:

- Adopting specific post-issuance policies and procedures to make sure they are prepared to comply with any and all obligations under a continuing disclosure certificate, including designating specific officials to be accountable for each obligation;
- Adopting policies and procedures for ensuring financial information contained in any public statements, whether made by an official or through other channels, is both accurate and complete;
- Indicating on all official publications and websites where potential investors should look for official financial disclosures and other information concerning the issuer; and
- Instituting ongoing training activities for officials and employees on all disclosure policies and procedures of the issuer.

If you have any questions regarding, or desire assistance with, your disclosure duties as an issuer of municipal securities or interpreting the SEC anti-fraud rules, please contact a Peck Shaffer attorney. Peck Shaffer has been a leader in public finance for over one hundred years, and has helped all different types of municipal securities issuers develop and implement policies and

[3] Id.

procedures on their disclosure obligations, including drafting our clients' disclosure agreements and post-issuance compliance policies and procedures, disseminating disclosure information to the municipal markets on behalf of our clients, and providing training to our clients' officers and employees.