

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9435 / July 29, 2013**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 70057 / July 29, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15391**

<p><b>In the Matter of</b></p> <p><b>West Clark Community Schools,</b></p> <p><b>Respondent.</b></p>
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**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against the West Clark Community Schools (“School District”).

**II.**

In anticipation of the institution of these proceedings, the School District has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, the School District consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and the School District's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. In March 2005, in accordance with Rule 15c2-12 of the Exchange Act ("the Rule"),<sup>2</sup> the West Clark Community Schools contractually undertook to annually disclose certain financial information, operating data and event notices in connection with a \$52 million municipal bond offering. In December 2007 the School District, in connection with a \$31 million municipal bond offering, affirmatively stated in public bond offering documents that it had not failed, in the previous five years, to comply in all material respects with any prior disclosure undertakings. This statement, as well as a Certificate and Affidavit signed by the School District attesting that the offering documents did not contain any untrue statement of material fact, were materially false. In fact, between at least 2005 and 2010 the School District never submitted any of its contractually required disclosures.

2. As a result of the conduct described above, the School District violated Section 17(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder.

#### Respondent

3. West Clark Community Schools is a corporate entity and political subdivision, located in Clark County, Indiana, and formed under Indiana law. It employs approximately 400 staff at eight different schools to teach approximately 4,500 students. An elected, five member Board of School Trustees ("School Board") governs the School District.<sup>3</sup>

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<sup>1</sup> The findings herein are made pursuant to School District's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Rule 15c2-12 prohibits, among other things and subject to certain exemptions, any underwriter from purchasing or selling municipal securities unless it has reasonably determined that the issuer of municipal securities, or an obligated person, has undertaken in a written agreement or contract, sometimes referred to as a Continuing Disclosure Agreement ("CDA"), to provide annual financial information and notices of certain material events ("Event Notices") to certain information repositories. An "obligated person" generally means any person or entity that is committed by contract or other arrangement to support payment of all or part of the obligations on the municipal securities being offered. The School District was an obligated person, and not the issuer, in the 2007 Offering. Additionally, Rule 15c2-12(f)(3) defines what information must be included in a final Official Statement. Among other things, this definition requires a description of the issuer's or obligated person's disclosure undertakings, as well as a description of any instances in the previous five years in which an issuer or obligated person failed to comply in all material respects with any previous disclosure undertakings.

<sup>3</sup> The Indiana State Constitution restricts the amount of debt Indiana school districts are allowed to incur. As a result, the Indiana legislature allows school districts to create distinct legal entities called "school building corporations," through which a school district can issue debt. These school building corporations are essentially shells, created and controlled by the school district for the limited purpose of providing funding for the benefit of the school district. In this matter, the School District offered bonds through its shell conduit issuer, the West Clark 2000

### **Related Entity**

4. City Securities Corporation (“City Securities”) is a broker-dealer headquartered in Indianapolis, Indiana, with approximately 200 employees and seven branch offices throughout Indiana. City Securities has been a registered broker-dealer with the Commission since 1936 and conducts a general securities business with an emphasis on the underwriting and sale of municipal securities by issuers located in the State of Indiana.

### **The School District’s 2005 Municipal Bond Offering**

5. In March 2005 the School District, using City Securities as its sole underwriter, publicly offered \$52 million of municipal bonds (“2005 Offering”).

6. Pursuant to Rule 15c2-12, the School District executed a Continuing Disclosure Agreement (“CDA”) in connection with the 2005 Offering. As part of the CDA, the School District covenanted and agreed to, among other things, submit an annual report containing certain financial information and operating data to the appropriate national and state repositories, as well as timely notices of certain specified events pertaining to the bonds at issue.<sup>4</sup> Further, the School District contracted to submit notices in the event it was unable to provide the contractually required annual report.

7. The president of the School Board (now deceased) signed the CDA on behalf of the School District.

8. The School District received and reviewed various drafts of both the preliminary, and what ultimately became the final, Official Statement for the 2005 Offering. As required by Rule 15c2-12, the final Official Statement included a summary description of the provisions of the CDA. The School District authorized and approved the Official Statement for the 2005 Offering, which was then disseminated to the public in connection with the offer and sale of the bonds.

### **The School District’s 2007 Municipal Bond Offering**

9. In December 2007 the School District, again using City Securities as its sole underwriter, publicly offered \$31 million of municipal bonds (“2007 Offering”).

10. The School District again received and reviewed various drafts of both the preliminary, and what ultimately became the final, Official Statement for the 2007 Offering. The Official Statement for the 2007 Offering included a section titled “Compliance with Previous Undertakings” which read: “[i]n the previous five years, the School [District] has never failed to comply, in all material

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School Building Corporation (“Building Corporation”). Consequently, under Rule 15c2-12, the School District constitutes an obligated person with respect to the Building Corporation’s municipal bond offerings.

<sup>4</sup> In December 2008, Rule 15c2-12 was amended to designate the Electronic Municipal Market Access system (“EMMA”) as the central repository for ongoing disclosures by municipal issuers effective July 1, 2009.

respects, with any previous undertakings . . .” The School District, including the now-deceased president of the School Board, reviewed, authorized and approved the Official Statement for the 2007 Offering, which was then disseminated to the public.

11. The statement contained in the “Compliance with Previous Undertakings” section of the Official Statement for the 2007 Offering was materially false. Between 2005 and 2010, the School District never submitted any annual reports, or any notice of its failure to submit annual reports, as required under the terms of its CDAs.

12. In addition, at the closing for the 2007 Offering, the School District executed a Certificate and Affidavit, attesting that the 2007 Official Statement did not “contain any untrue statement of material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.” Under the terms of the Bond Purchase Contract with City Securities, execution of the Certificate and Affidavit by the School District was a prerequisite to City Securities’s obligation to purchase the 2007 Offering.

13. The now-deceased president of the School Board signed the Certificate and Affidavit on behalf of the School District.

14. The School District’s assertions in the 2007 Certificate and Affidavit were materially false. As discussed above, the Official Statement for the 2007 Offering contained untrue statements of material fact.

15. The School District knew, or was reckless in not knowing, that it never submitted any of the reports, notices or disclosures required by the CDA. In addition, the School District either knew, or was reckless in not knowing, that the Official Statement for the 2007 Offering, and the Certificate and Affidavit signed in connection with the 2007 Offering, contained materially false information.

### **Legal Discussion**

16. Municipal securities issuers, or obligated persons such as the School District, are subject to the antifraud provisions of the federal securities laws. Section 17(a)(2) of the Securities Act prohibits any person from, directly or indirectly, “obtain[ing] money or property by means of any untrue statement of a material fact” or misleading omissions. Section 10(b) and Rule 10b-5(b) of the Exchange Act prohibit the making of (1) a false statement or omission; (2) of material fact; (3) with scienter; (4) in connection with the purchase or sale of any security. *See SEC v. McConville*, 465 F.3d 780, 786 (7th Cir. 2006). A fact is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *See Basic Inc. v. Levinson*, 485 U.S. 224, 231 (1988). The Supreme Court has previously defined scienter as “a mental state embracing intent to deceive, manipulate or defraud.” *Id.* Recklessness is sufficient to establish scienter under Section 10(b) and Rule 10b-5. *Miller v. Champion Enter., Inc.*, 346 F.3d 660, 672 (6th Cir. 2003). “Recklessness” has been defined for purposes of liability under Section 10(b) of the Exchange Act as an “extreme departure from the standards of ordinary care, which

presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.” McConville v. SEC, 465 F.3d 780, 788 (7th Cir. 2006), 2007 U.S. App. LEXIS 926 (Jan. 17, 2007). Section 17(a)(2) violations do not require proof of scienter. Aaron v. SEC, 446 U.S. 680, 697 (1980). There is a substantial likelihood that a reasonable investor determining whether to purchase the municipal securities would attach importance to the School District’s failure to comply with its prior continuing disclosure undertakings

17. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. Disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities.<sup>5</sup> Therefore, the Rule requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. Failure to provide such annual financial information is the type of information required to be disclosed to a customer by a broker-dealer and is a significant factor to be taken into account by a dealer in determining whether or not to recommend a security.<sup>6</sup>

18. In addition, it is important for investors and the market to know the scope of any ongoing disclosure undertakings, and the type of information to be provided. The Rule therefore requires that the undertakings provided pursuant to the Rule be described in the final Official Statement. This allows investors to ascertain whether the undertakings have been satisfied.<sup>7</sup>

19. Moreover, critical to any evaluation of an undertaking to make disclosures, is the likelihood that the issuer or obligated person will abide by the undertaking.<sup>8</sup> Therefore, the Rule requires disclosure in the final Official Statement of all instances in the previous five years in which any person providing an undertaking failed to comply in all material respects with any previous undertakings. This provides an incentive for issuers, or obligated persons, to comply with their undertakings, allowing underwriters, investors and others to assess the reliability of the disclosure representations.<sup>9</sup>

20. As a result of the conduct described above, the School District violated Section 17(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder.

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<sup>5</sup> See Securities Exchange Act Release No. 34-33741 (March 9, 1994), 59 FR 12748 (March 17, 1994) (“1994 Interpretive Release”), at 12752.

<sup>6</sup> See Securities Exchange Act Release No. 34-34961 (November 10, 1994), 59 FR 59590 (November 17, 1994) (“1994 Adopting Release”), at 59602-3.

<sup>7</sup> See *id.* at 59594.

<sup>8</sup> See *id.*

<sup>9</sup> See 1994 Adopting release, 59 FR 59590, at 59595.

## Undertakings

The School District has undertaken to:

21. Within one hundred eighty (180) days of the entry of this Order, and with the assistance of counsel:

a. Ensure that all contractually required disclosure submissions are current and accurate.

b. Adopt and ratify enhanced, written disclosure policies and procedures regarding its contractual continuing disclosure obligations (“Disclosure Policies”). Among other things, these Disclosure Policies will designate an individual at the School District to be responsible for ensuring compliance with all contractually required disclosure submissions, and will require that individual to annually certify to the superintendent of the School District that the submissions are current and accurate. That individual shall further certify that any information regarding the School District in any preliminary and final offering documents of any future securities offerings for which the School District is an issuer or obligated person is accurate and complete, and shall ensure that the terms of the Order are disclosed in any such offering documents within five years from the date of the Order. The School District will submit a copy of the Disclosure Policies on EMMA within thirty (30) days of adoption and ratification. If the Disclosure Policies are amended, such amendments will be provided to EMMA as soon as practicable after such amendments take effect.

c. Implement annual training for personnel involved in the bond offering and disclosure process (“Bond Offering Personnel”). The School District will designate an individual or entity to be responsible for providing such training, which shall include a complete review of all Disclosure Policies and the School District’s obligations under the federal securities laws. Upon completion of the annual training, all Bond Offering Personnel will provide a signed certification of completion to the superintendent of the School District, as well as a signed certification that they have reviewed, understand and will comply with the Disclosure Policies.

d. Establish policies and procedures to ensure that the School District submits all documents, reports and notices required to be submitted to the Municipal Securities Rulemaking Board (“MSRB”) pursuant to any contractually required continuing disclosure obligation through EMMA in an electronic format, accompanied by identifying information, in the manner prescribed by the MSRB.

22. Within one hundred eighty (180) days of the entry of this Order, the School District shall file an affidavit with the Commission certifying its compliance with this Order and providing a copy of all Disclosure Policies, with a copy to Elaine C. Greenberg, Chief, Municipal Securities and Public Pensions Unit, U.S. Securities and Exchange Commission, Philadelphia Regional Office, The Mellon Independence Center, 701 Market Street, Philadelphia, PA 19106-1532.

23. In determining whether to accept the Offer, the Commission has considered these undertakings.

**IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the School District's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, the School District shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

By the Commission.

Elizabeth M. Murphy  
Secretary