

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 9677 / November 6, 2014

SECURITIES EXCHANGE ACT OF 1934

Release No. 73539 / November 6, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16259

In the Matter of

CITY OF ALLEN PARK, MICHIGAN,

Respondent.

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 City of Allen Park, Michigan (the “City” or “Respondent”).

II.

In anticipation of these proceedings, the City 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 City 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, as set forth below.

III.

On the basis of this Order and the City’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

This matter involves municipal securities issued by the City pertaining to a movie studio project (“Studio Project”) that the City began planning for in 2008. The City’s securities were “double barreled” bonds, with debt service to be repaid initially from revenues derived from the Studio Project, but if need be from tax revenues of the City. The Studio Project’s original plan was that it would be a \$146 million facility with eight sound stages, led by a Hollywood executive director, and that the City initially would repay the bond debt service with \$1.6 million of revenue from leases at the site. The City planned to develop the Studio Project in part by issuing bonds, which it ultimately did on November 12, 2009 and June 16, 2010 (collectively “Bonds”). By the time the City issued the Bonds, however, the plans to implement and pay for the Studio Project had deteriorated significantly. None of these changes, however, were reflected in the Bond offering documents nor in any of the City’s other public statements. Instead, the Bond offering documents continued to repeat the original plans. In fact, by the time the Bonds were issued, the Studio Project had deteriorated to the point where it was a much smaller project, consisting of building and operating a vocational school. The deterioration put the City’s ability to service the debt for the Bond offering at substantial risk. Without revenues from the Studio Project, the expected annual debt payments on the Bonds represented approximately 10% of the City’s total budget. In addition, in connection with the Bond offerings, the City included outdated budget information which did not reflect the City Administrator’s knowledge that the City had a projected deficit for Fiscal 2010 of at least \$2 million, or over 8.4% of its total budgeted revenue for Fiscal 2010.

Background

1. In April 2008 the State of Michigan enacted legislation that provided significant tax credits to film studios conducting business in Michigan. In August 2008 the City was approached by an owner and operator of a California film and post-production sound studio (“Producer”) who inquired about building a Studio Project in the City.

2. The City believed that the Studio Project would bring much-needed economic development to the City. To support the Project, it therefore agreed to offer what ultimately became a total of \$28.275 million of general obligation limited tax bonds issued on November 12, 2009 (“2009 Bonds”) and another \$2.725 million of general obligation limited tax bonds issued on June 16, 2010 (“2010 Bonds”).

The Public Private Partnership

3. The City and the Producer planned that the Studio Project would be financed and built through a Public Private Partnership (“PPP”), consisting of a limited liability corporation with the City, the Producer and a private developer (“Developer”) as members. The City would use the municipal bond proceeds to buy land which it then would donate to the PPP to use for the Studio Project. The Developer would finance and build structures while the Producer would manage the Project and find investors to fund the film production.

4. In April 2009 the City issued a press release that included relevant plans about the Studio Project that were available at that point. These plans, which the City then maintained on its website through at least June 2010, were that the Studio Project would be a full-service film and media production facility that would employ thousands of skilled workers, be located on 104 acres, include 750,000 feet of facilities and have eight sound stages, and would be led by a Hollywood production executive at a cost of \$146 million.

5. In May 2009, as the City was preparing its Fiscal 2010 budget, it faced a deficit of approximately \$2 million. The Producer offered to provide up to \$2 million to remove the deficit. Although the City Administrator originally understood the \$2 million would be a “financial gift,” the Producer sent the City Administrator a letter on May 14, 2009, stating that the \$2 million was a “capital repayment” contingent on the City’s contribution of land to the PPP.

6. In early June 2009, the Producer, the City, and the Developer signed an agreement for the PPP, pursuant to which the Developer committed \$20 million for the Project’s first phase.

The Collapse of the PPP and the City’s \$2 Million Budget Shortfall

7. In July 2009 the City’s bond counsel advised the City that bond proceeds could not be used to purchase land that then would be donated to the PPP.

8. Because the City could not donate assets purchased with bond proceeds, it could not meet the contribution requirements necessary for membership in the PPP. The collapse of the PPP meant that the Developer, who had pledged to contribute \$20 million, no longer had any obligations to the Studio Project.

9. The collapse of the PPP also meant that the City’s Fiscal 2010 budget now had a \$2 million shortfall because the Producer no longer had any obligation to pay the \$2 million. Although the City Administrator knew this, he took steps to create the false impression that the City would still receive this money and did not have a \$2 million deficit. The \$2 million purported “donation” represented 8.4% of the City’s budgeted \$22 million in Fiscal 2010 revenue and was instrumental in creating the false appearance that the City’s budget for Fiscal 2010 had no deficit.

10. In addition, the Producer’s proposal to attract investors, media producers and tenants for the Studio Project had been based on the assumption that he would manage and control the entire Project. When the PPP collapsed, however, the City decided to own and manage the property itself. By August 2009, the plan was that the Producer was only going to lease 100,000 square feet and to operate a vocational school to train potential workers in the movie production business.

11. Thus, the City’s plan for the Studio Project deteriorated significantly between April 2009, when the City issued its first press release, and November 12, 2009, when the City issued the 2009 Bonds. By the time the 2009 Bonds were issued, the City no longer had any private investor money in place to build or develop the Studio Project and the Producer no longer had the ability to lead the development or attract investors. In addition, the amount of funding

that the City initially believed that Wayne County, Michigan would provide had decreased significantly.

The 2009 Bonds Did Not Disclose Material Negative Information

12. The City, however, did not disclose any of these adverse facts in the offering documents for the bonds it issued on November 12, 2009.

13. Instead, the offering documents for the 2009 Bonds included a “Development” section that continued to describe the Studio Project by repeating substantially all of the same information that had been contained in the City’s initial April 2009 press release announcing the Project.

14. In addition, the offering documents for the 2009 Bonds stated that the City intended initially to repay the 2009 Bonds by leasing facilities at the Studio Project and using the lease revenues towards payment of the 2009 Bonds. This representation was highly relevant to the City’s ability to service its debt since the expected annual debt service otherwise would have constituted approximately 10% of the City’s annual budget. The Official Statement for the 2009 Bonds also said that the City had existing leases “under contract” totaling \$1.6 million (in annual revenues) for 48% of available space and that additional lease arrangements, representing 27% of available space, were currently in negotiation.

15. At the time the 2009 Bonds were issued, however, the projected \$1.6 million annual revenues included at least \$300,000 from the Producer which the City’s Administrator knew to be unreliable. The City’s Administrator also was aware that there were no existing negotiations regarding 27% of available space.

16. Finally, the City attached its Fiscal Year 2010 budget as an appendix to the Official Statements for both its 2009 and its 2010 Bonds. The budget, which reflected the City’s expectation that it would have a general fund surplus at the end of Fiscal Year 2010, appeared to be balanced because it was based on the assumption that the Producer would donate \$2 million to the City. The City Administrator, however, knew this \$2 million would not be forthcoming because it had depended on the existence of the PPP. The budget attached to the 2009 Official Statements thus was materially inaccurate because the City had a projected \$2 million deficit for Fiscal 2010.

The Bonds were rated “A” and Issued in November 2009

17. On October 20, 2009 Standard & Poor (“S&P”) assigned the 2009 Bonds an “A” rating. S&P’s write-up noted that the FY 2010 budget was balanced only because of the \$2 million donation, and pointed out that the City would have to address this structural imbalance.

18. Several investors who purchased the 2009 Bonds would not have done so had the 2009 Bonds not been rated “A.”

Additional Adverse Developments Occurred Before the City Issued its June 2010 Bonds

19. After the 2009 Bonds were issued, the City retained a company to manage the Studio Project site. On February 12, 2010, the management company advised that the City's net cash flow from lease revenue at the site would decrease significantly, at least for the first three years.

20. On May 6, 2010 the City served the Producer with an eviction notice, on the grounds that the Producer had not paid his rent on time. The parties later negotiated an amended lease for only one-half the amount of space at one-half the rent – with rent payments to begin in August 2010.

21. Despite these additional significant negative developments affecting the Studio Project, the City prepared to and did issue the second set of Bonds it had planned for the Project on June 16, 2010. Although two weeks before the 2010 Bonds were issued, the City Council had adopted a budget for Fiscal Year 2011 which acknowledged the \$2 million budget shortfall, the Official Statement for the 2010 Bonds again incorporated the City's Fiscal 2010 budget figures which omitted the \$2 million shortfall.

22. The 2010 Bond offering documents misleadingly also continued to list tenants at the Studio Property with purported "total leases under contract represent[ing] approximately \$1.6 million of annual revenue" with total annual debt service accurately estimated at \$2.6 million.

23. Finally, notwithstanding that the Producer by this time had reduced his presence at the Studio Project by half, the offering documents falsely continued describing the Studio Project as a "\$146 million, full-service movie, television and new media production studio" that would include 750,000 square feet, eight sound stages, employ thousands of unionized skilled workers and be led by the Producer.

24. On September 29, 2010 the Producer advised the City that he was terminating his lease at the Studio Property and vacated the site on October 4, 2010. The City Administrator resigned on February 27, 2011 and the Mayor resigned on May 24, 2011.

The Effect of the Studio Project Collapse on the City

25. The collapse of the Studio Project had a significant impact on the City's financial condition. The City filed a notice on the Electronic Municipal Market Access system ("EMMA") on December 29, 2010 that it was not filing an annual report for fiscal year 2010.

26. On March 8, 2011 S&P downgraded the City's unlimited tax bonds to BB+ and its limited tax GO bonds to BB+.

27. The City did not file any continuing disclosure until January 4, 2012, at which time it announced it had received a going concern emphasis of matter paragraph from its auditor. On June 21, 2012 the Michigan State Treasurer began a Preliminary Review of the City, pursuant to State law, and issued a Final Report on August 8, 2012 recommending the appointment of an Emergency Manager. The Studio Project was listed as a primary factor in the

City's deteriorating economic condition. An Emergency Manager was appointed in October 2012 and governed for two years. The City is currently transitioning to a Receivership Transition Advisory Board who will oversee the City's transition to home rule and governance by an elected City Council again.

28. The City's most recent annual audit report, dated December 16, 2013, for Fiscal 2013, again includes a going concern emphasis of matter paragraph because of the City's general fund deficit of \$694,185 and its Studio Project fund deficit of \$10,370,611.

Remedial Measures

29. The City has agreed to implement certain remedial measures including:

a. the adoption of written policies and procedures drafted by disclosure counsel, a copy of which will be provided to the Commission staff, to facilitate the City's the City's compliance with its obligations under federal securities law when issuing municipal bonds;

b. for any securities offering conducted by the City within two years from the entry of a cease-and-desist order, a designated individual will certify, upon consultation with disclosure counsel, that the offering documents do not contain any untrue statements of material fact or omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The terms of the Order will be disclosed in offering documents the City issues for two years from the date of the Order; and

c. the designation of disclosure counsel responsible for training all personnel involved in the City's bond offering and disclosure process. Training shall include a complete review of the Policies and Procedures and the City's obligations under the federal securities laws. When complete, the individual will send to the Commission staff certification that the training took place and the titles of the attendees.

Legal Discussion

30. Issuers of municipal securities are responsible for the accuracy of their disclosure documents. Proper disclosure allows investors to understand and evaluate the financial risk of the security in which they are investing. The omission of material facts can render statements and disclosures, which are made, materially misleading.

31. 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 17(a)(2) of the Securities Act can be violated by negligent conduct. In the Matter of Credit Suisse Securities (USA LLC, Securities Act Release No. 9368, 2012 SEC LEXIS 3569, *18 (Nov. 16, 2012). Section 10(b) and Rule 10b-5(b) of the Exchange Act prohibit the making of: (a) a false statement or omission; (b) of material fact; (c) with scienter; (d) in connection with the purchase or sale of any security. *See SEC v. George*, 426 F.3d 786, 792 (6th Cir. 2005). 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 previously has 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). For purposes of liability under Section 10(b) of the Exchange Act, “recklessness” has been defined as “highly unreasonably conduct which is an extreme departure from the standards of ordinary care. While the danger need not be known, it must at least be so obvious that any reasonable man would have known of it.” Louisiana School Employees’ Retirement System v. Ernst & Young, LLP, 622 F.3d 471, 479 (6th Cir. 2010).

Violations

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

Remedial Measures

33. In determining to accept the Offer, the Commission considered the remedial measures the City has agreed to conduct, as described in Paragraph 29, and the cooperation afforded the Commission staff during the investigation.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the City’s Offer.

Accordingly, it is hereby ORDERED that, pursuant to Section 21C of the Exchange Act and Section 8A of the Securities Act, the City of Allen Park, Michigan shall cease and desist from committing or causing any violations and any future violations of Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 17(a) of the Securities Act

By the Commission.

Brent J. Fields
Secretary