

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

**SECURITIES ACT OF 1933**  
**Release No. 10147 / August 24, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17440**

**In the Matter of**

**CITY OF MEMPHIS,**  
**TENNESSEE,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND 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”), against City of Memphis, Tennessee (“Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent 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, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

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<sup>1</sup> 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**

1. This matter involves material misstatements by Respondent in the sale of municipal securities. Specifically, in certain official statements for municipal securities, Respondent affirmatively misstated that it had materially complied with a prior agreement to provide continuing disclosure. Respondent was an issuer responsible for making the continuing disclosure and for the material misstatements in the official statement. As a result of the conduct described herein, Respondent violated Section 17(a)(2) of the Securities Act.

2. The violations discussed in this Order were self-reported by Respondent to the Commission pursuant to the Division of Enforcement's (the "Division") Municipalities Continuing Disclosure Cooperation Initiative.<sup>2</sup> Accordingly, this Order and Respondent's Offer are based on information self-reported by the Respondent.

## **Respondent**

3. Respondent, the largest city in Tennessee with a population of approximately 650,000, is a municipal corporation governed by an elected mayor and a 13-member city council. The city council can exercise legislative powers, approve budgets, establish the tax rate, and issue debt.

## **Prior Continuing Disclosure Agreement**

4. Rule 15c2-12 of the Securities Exchange Act of 1934 ("Exchange Act") generally prohibits any underwriter from purchasing or selling municipal securities unless it has reasonably determined that the municipal issuer or other obligated person<sup>3</sup> has undertaken in a written agreement to provide annual financial information and, if not included in the annual financial information, audited financial statements when and if available, to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system ("EMMA").<sup>4</sup> In addition, the agreement, sometimes referred to as a continuing disclosure agreement, must include an undertaking by the municipal issuer or obligated person to provide timely notice of certain specified events pertaining to the municipal securities being offered and timely notice of any failure to submit annual financial information on or before the date specified in the continuing disclosure agreement.

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<sup>2</sup> See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Municipalities Continuing Disclosure Cooperation Initiative, <http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml> (last modified Nov. 13, 2014).

<sup>3</sup> 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. See 17 C.F.R. § 240.15c2-12(f)(10).

<sup>4</sup> Previously, Rule 15c2-12 required such information to be provided to the appropriate nationally recognized municipal securities information repositories. In December 2008, Rule 15c2-12 was amended to designate EMMA as the central repository for ongoing disclosures by municipal issuers and obligated persons, effective July 1, 2009.

5. In a securities offering which preceded the offerings at issue in this matter, Respondent executed a continuing disclosure agreement, for the benefit of investors in that earlier offering. In that agreement, Respondent agreed to, among other things, submit annual financial information to the appropriate repositories within certain timeframes, as well as timely notices of certain specified events pertaining to the municipal securities being offered. Respondent agreed to submit notices in the event it was unable to provide the contractually required annual reports. Respondent also agreed to provide audited annual financial statements within certain timeframes.

6. Despite executing this continuing disclosure agreement, Respondent failed to comply in all material respects with its commitment to provide certain types of continuing disclosure within the timeframes set forth in the continuing disclosure agreement.

**Misstatements About Compliance with Continuing Disclosure Agreement in Subsequent Municipal Securities Offerings**

7. After these material failures to comply with a prior continuing disclosure agreement, Respondent issued new municipal securities. As part of those new issuances, Respondent again undertook to make continuing disclosure for the benefit of investors and disseminated final official statements in connection with the new offerings.

8. In the official statements for the new municipal securities, Respondent made materially false and/or misleading statements about its prior compliance with its earlier continuing disclosure agreement, as follows:

- A 2012 negotiated offering in which the final official statement read in relevant part: “Due to an administrative oversight, the City failed to timely file its 2008 annual disclosure report with respect to its Sanitary Sewer Bonds; with the exception of this filing, the City has made all of its required filings set forth in the related undertakings.” This was false and misleading because it failed to disclose that Respondent also was late in filing its audited financial reports for fiscal 2007 by 80 days, for 2009 by 610 days, although filed in the wrong location only 72 days late, and for 2010, although timely filed in the wrong location, by 245 days. Respondent failed to file notices of late filings for each of those;
  - A 2011 negotiated offering in which the final official statement read in relevant part: “The City represents that since July 3, 1995, it has not failed to comply in any material respect with any previous undertaking in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule.” This was false and misleading because it failed to disclose that Respondent was late in filing its audited financial reports for fiscal 2007 by 80 days, for fiscal 2009 by 610 days, although filed in the wrong location only 72 days late, and for fiscal 2010, although timely filed in the wrong location, by 245 days. Respondent failed to file notices of late filings for each of those.
9. Respondent knew or should have known that these statements were untrue.

## Legal Discussion

10. Section 17(a)(2) of the Securities Act makes it unlawful “in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2). See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission 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, 231-32 (1988).

11. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer or obligated person undertakes, among other things, to annually submit certain financial information. See 17 C.F.R. § 240.15c2-12(b)(5)(i); Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994).

12. In addition, it is important for investors and the market to know the scope of any ongoing disclosure undertakings, and the type of information provided. See id. at 59594. Rule 15c2-12 therefore requires that undertakings provided pursuant to Rule 15c2-12 be described in the final official statement. 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. See id. Therefore, Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings. The requirements of Rule 15c2-12 allow underwriters, investors, and others to assess the reliability of the disclosure representations. See id. at 59595.

13. As a result of the conduct described above, Respondent violated Section 17(a)(2) of the Securities Act.

## Cooperation

14. In determining to accept Respondent’s offer, the Commission considered the cooperation of Respondent in self-reporting the violations.

## Undertakings

15. Respondent has undertaken to:

- a. Within 180 days of the entry of this Order, establish appropriate written policies and procedures and periodic training regarding continuing disclosure obligations to effect compliance with the federal securities laws,

including the designation of an individual or officer at Respondent responsible for ensuring compliance by Respondent with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of such training.

b. Within 180 days of the entry of this Order, comply with existing continuing disclosure undertakings, including updating past delinquent filings if Respondent is not currently in compliance with its continuing disclosure obligations.

c. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

d. Disclose in a clear and conspicuous fashion the terms of this settlement in any final official statement for an offering by Respondent within five years of the institution of these proceedings.

e. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Ghazil Gaunt, Chief, Public Finance Abuse Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424, with a copy to the Office of Chief Counsel of the Division, no later than the one-year anniversary of the institution of these proceedings.

f. Cooperate with any subsequent investigation by the Division regarding the false statement(s) and/or material omission(s), including the roles of individuals and/or other parties involved.

#### **IV.**

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall comply with the undertakings enumerated in paragraphs 15(a)-(e) of Section III, above.

By the Commission.

Brent J. Fields  
Secretary