

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

**SECURITIES ACT OF 1933**  
**Release No. 9610 / July 8, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15966**

**In the Matter of**  
**Kings Canyon Joint Unified School**  
**District**  
**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 Kings Canyon Joint Unified School District (“Issuer” or “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, Issuer 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:

#### **Summary**

1. Between December 2006 and December 2007, in accordance with Rule 15c2-12 of the Securities Exchange Act of 1934 ("Rule 15c2-12"),<sup>2</sup> the Issuer contractually undertook to annually disclose certain financial information, operating data, and event notices in three municipal bond offerings, totaling over \$30 million. Between at least 2008 and 2010, however, the Issuer failed to comply with its contractual undertakings by failing to submit some of the required disclosures. Despite this failure to fully comply with its prior undertakings, in November 2010 the Issuer, in a fourth, \$6.8 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 was an untrue statement of a material fact.

2. As a result of the conduct described above, the Issuer violated Section 17(a)(2) of the Securities Act in the November 2010 bond offering.

#### **Respondent**

3. Kings Canyon Joint Unified School District serves students in the California Counties of Fresno and Tulare. It employs approximately 1000 full and part-time staff at 19 school campuses. Its current enrollment is approximately 10,000 students. An elected, seven-member Board of Trustees governs the Issuer.

#### **The Issuer's Continuing Disclosure Undertakings**

4. In December 2006 the Issuer publicly offered \$19 million of municipal bonds, in November 2007 the Issuer publicly offered \$4.5 million of municipal bonds, and in December 2007

---

<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.

<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 Certificate, 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. 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.

the Issuer publicly offered \$6.7 million of certificates of participation (collectively, the “Municipal Offerings”).

5. Pursuant to Rule 15c2-12, the Issuer executed contractual agreements to make disclosures (“Continuing Disclosure Certificates”) in the Municipal Offerings. As part of the Continuing Disclosure Certificates, the Issuer covenanted and agreed to, among other things, submit annual reports 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 municipal securities at issue.<sup>3</sup> Further, the Issuer contracted to submit notices in the event it was unable to provide the contractually required annual reports.

6. The Issuer received and reviewed various drafts of both the preliminary, and what ultimately became the final Official Statements for the Municipal Offerings. As required by Rule 15c2-12, the final Official Statements included summary descriptions of the provisions of the respective Continuing Disclosure Certificates. The Issuer authorized and approved the Official Statements, which were then disseminated to the public in the offer and sale of the municipal securities.

#### **The Issuer Failed to Fully Comply with its Contractual Continuing Disclosure Obligations**

7. Between at least 2008 and 2010, the Issuer failed to submit some of the disclosures required under the contractual terms of its Continuing Disclosure Certificates.

#### **The Issuer’s 2010 Municipal Bond Offering**

8. In November 2010 the Issuer publicly offered \$6.8 million of municipal bonds (“2010 Offering”).

9. The Issuer again received and reviewed various drafts of both the preliminary, and what ultimately became the final, Official Statement for the 2010 Offering. The Official Statement for the 2010 Offering included a section titled “Continuing Disclosure” which read in part: “[t]he District has had no instance in the previous five years in which it failed to comply in all material respects with any previous continuing disclosure obligation under [Rule 15c2-12].” The Issuer reviewed, authorized and approved the Official Statement for the 2010 Offering, which was then disseminated to the public.

---

<sup>3</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.

10. The statement regarding compliance with prior continuing disclosure obligations contained in the “Continuing Disclosure” section of the Official Statement for the 2010 Offering was an untrue statement of a material fact. The Issuer should have known that this statement was untrue.

### **Legal Discussion**

11. Section 17(a)(2) of the Securities Act makes it unlawful “in the offer or sale of any securities ... 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.” The prohibitions of Section 17(a)(2) apply to the offer or sale of municipal securities. In order to establish a cause of action under Section 17(a)(2), the Commission must establish that: (1) the misrepresentations or omissions were material; and (2) the misrepresentations or omissions were in the offer or sale of securities. *Aaron v. SEC*, 446 U.S. 680 (1980). No finding of scienter is required to establish a violation of Section 17(a)(2); negligence is sufficient. *Id.* at 696-97. There is a substantial likelihood that a reasonable investor determining whether to purchase the Issuer’s municipal securities would attach importance to the Issuer’s failure to comply with its prior continuing disclosure undertakings.

12. 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>4</sup> Therefore, Rule 15c2-12 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>5</sup>

13. 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. Rule 15c2-12 therefore requires that the undertakings provided pursuant to Rule 15c2-12 be described in the final Official Statement. This allows investors to ascertain whether the undertakings have been satisfied.<sup>6</sup>

---

<sup>4</sup> See Securities Exchange Act Release No. 34-33741 (March 9, 1994), 59 FR 12748 (March 17, 1994), at 12752.

<sup>5</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>6</sup> See *id.* at 59594.

14. 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>7</sup> Therefore, Rule 15c2-12 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>8</sup>

15. As a result of the conduct described above, the Issuer violated Section 17(a)(2) of the Securities Act in the 2010 Offering.

### **Undertakings**

The Issuer has undertaken to:

16. Within one hundred eighty (180) days of the entry of this Order, establish appropriate written policies and procedures and periodic training regarding continuing disclosure obligations pursuant to Rule 15c2-12 to ensure compliance with the federal securities laws, including the designation of an individual or officer at the Issuer responsible for ensuring compliance by the Issuer with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of such training.

17. Within one hundred eighty (180) days of the entry of this Order, comply with existing continuing disclosure undertakings, including updating past delinquent filings if the Issuer is not currently in compliance with its continuing disclosure obligations.

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

19. Disclose in a clear and conspicuous fashion the terms of this settlement in any final official statement for an offering by the Issuer within five years of the entry of this Order.

20. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), 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 the Issuer agrees to provide such evidence. The certification and supporting material shall be submitted to Cary S. Robnett, Assistant Director, Municipal Securities and Public Pensions Unit, Division of Enforcement, Securities and Exchange Commission, San Francisco Regional Office,

---

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

<sup>8</sup> See 1994 Adopting release, 59 FR 59590, at 59595.

44 Montgomery Street, Suite 2800, San Francisco, CA 94104 or to her successor in office, with a copy to the Office of Chief Counsel of the Enforcement Division, on the one year anniversary of the entry of this Order.

**IV.**

Accordingly, it is hereby ORDERED that:

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

B. The Issuer shall comply with the “Undertakings” enumerated in Section III, paragraphs 16, 17, 19, and 20 above.

By the Commission.

Jill M. Peterson  
Assistant Secretary