

SEC CHARGES SAN DIEGO'S INDEPENDENT AUDITOR FOR FRAUD IN CONNECTION WITH CITY MUNICIPAL SECURITIES OFFERINGS

Washington, D.C., Dec. 11, 2007 – The Securities and Exchange Commission filed a settled civil fraud action yesterday against San Diego's independent auditor in connection with the city's false and misleading financial statements in five 2002 and 2003 bond offerings.

According to the Commission's complaint, the independent auditor issued unqualified audit reports on the bond offerings that raised \$260 million from investors but contained materially false and misleading information about San Diego's pension and retiree health care obligations.

The Commission charges against certified public accountant Thomas J. Saiz and his firm, Calderon, Jaham & Osborn (CJO), allege that they failed to comply with generally accepted accounting standards, were not knowledgeable about San Diego, and failed to obtain sufficient competent evidential matter.

"Auditors play an important role in providing investors with material information in municipal securities offerings," said Linda Chatman Thomsen, Director of the SEC's Enforcement Division. "It is therefore critical that auditors of municipalities conduct their audits with a high degree of rigor, competence and independence, and that cities hire auditors who have the technical skills, experience and resources to conduct proper audits and not hire auditors based primarily on the lowest bid or other factors unrelated to the auditor's skills, resources and abilities."

Rosalind Tyson, Acting Regional Director of the SEC's Los Angeles Regional Office, added, "Saiz, like many independent auditors of municipalities, participated in drafting the footnote disclosures to the city's financial statements. Saiz failed to exercise proper professional care and skepticism to see that San Diego disclosed both the positive and negative information regarding its pension and retiree health care obligations."

According to the Commission's complaint, San Diego was the seventh largest city in the United States in 2001 and 2002, with revenues exceeding \$1 billion per year and assets in excess of \$10 billion. San Diego's pension plan had net assets of \$2.5 billion and total additions to the plan of more than \$85 million. CJO was the independent auditor for San Diego and its pension plan in 2001 and 2002, and Saiz was sole shareholder of CJO, which had approximately 30 employees.

The Commission's complaint alleges that Saiz and CJO drafted, subject to San Diego's review and approval, the disclosures in footnotes to the city's financial statements. The footnotes disclosed that San Diego was under-funding its annual pension contribution but also included positive statements about the city's method for funding its pension

obligations. These statements included that the city's funding method contained a provision to ensure that the pension's funded level would not drop below a certain level to protect the pension plan's financial integrity; that the pension plan's actuary believed that the city's pension funding method was an excellent method for the city; and that the total amount that the city had under-funded its annual pension contribution, or net pension obligation, was funded in a reserve.

The SEC's complaint alleges that these statements were false and misleading because the city's net pension obligation was not funded in a reserve and, in 2002, the pension plan had fallen below a funded level that the actuary deemed appropriate and the actuary no longer supported the city's funding method. The complaint further alleges that Saiz and CJO knew or were reckless in not knowing that the disclosure was false and misleading as a result of information Saiz received from his audits of the city and its pension plan and his review of the city's bond offering documents.

CJO and Saiz also drafted footnotes that disclosed that the city provided health benefits to retirees at a cost of \$7.2 million in 2001 and \$8.9 million in 2002 and that the expenses for such benefits were recognized as they were paid. The complaint alleges that Saiz and CJO knew or were reckless in not knowing that this disclosure was misleading because it failed to disclose, as Saiz and CJO knew from auditing the city and its pension plan, that the retiree health care expense was being paid with earnings from the pension plan and that the city would soon have to begin paying this substantial expense out of its own budget.

According to the SEC's complaint, Saiz and CJO also audited San Diego's financial statements and issued reports falsely stating that the financial statements were fairly presented in conformity with generally accepted accounting principles (GAAP) and the audits were performed in accordance with generally accepted auditing standards (GAAS). Saiz and CJO also consented to San Diego's including CJO's audit report in its 2002 and 2003 municipal securities offerings. As alleged in the complaint, the false and misleading statements regarding the city's pension obligations were not presented in conformity with GAAP.

The Commission's complaint also alleges that at the time they consented to San Diego's including the audit report in the 2003 offering documents, Saiz and CJO also failed, as required by GAAS, to inquire into the recent substantial increase in the city's obligations to its pension to determine whether the financial statements or the audit report required revision.

Without admitting or denying the allegations in the complaint filed in federal district court in San Diego, Saiz and CJO have consented to the entry of final judgments permanently enjoining them from violating the antifraud provisions of the federal securities laws. Additionally, Saiz has agreed to pay a \$15,000 civil penalty.

The Commission previously entered an order sanctioning the City of San Diego for committing securities fraud by failing to disclose to the investing public important

information about its pension and retiree health care obligations in the sale of its municipal bonds in 2002 and 2003. To settle the action, the city agreed to cease and desist from future securities fraud violations and to retain an independent consultant for three years to foster compliance with its disclosure obligations under the federal securities laws.

The Commission's investigation is ongoing as to other individuals and entities that may have violated federal securities laws.

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