

JEFFERSON COUNTY SEWER DEBT: SEC must take steps against JPMorgan

Posted by bblalock May 17, 2009 02:05AM

Will the Securities and Exchange Commission at last take action against JPMorgan Chase & Co., relative to the egregious abuse against Jefferson County?

Now that the SEC has undertaken the investigation, I am heartened but wary. The flagrant fleecing of Jefferson County by JPMorgan began in 1997. The fact that it has taken 12 long years for this travesty to come to the attention of the SEC is outrageous. While the county continues to struggle against this possibly fatal injury, JPMorgan has sown seeds of malfeasance throughout the country. It is past time for the SEC to take strong steps to rectify this despicable situation, but I question its inclination to do so. I am gravely concerned the county will remain an uncompensated victim of unbridled greed perpetrated by JPMorgan.

Thanks to relentless prodding by U.S. Rep. Spencer Bachus and, ultimately, intense scrutiny by Congress, the SEC finally responded to complaints that JPMorgan fleeced Jefferson County in the guise of financing the Jefferson County sewer debt.

Whether injury occurred by intent or negligence, I leave for our courts to determine. Arguments that Jefferson County's wounds are completely self-inflicted fail miserably in the context of JPMorgan's worldwide epidemic of abuse of local governments through the use of derivatives. News reports of property seizures and lawsuits by local governments across the U.S., Europe and throughout the world evidence a pattern of deception identical to those JPMorgan employed here.

But JPMorgan's guilt lies as much in what it did not do as in what it did. JPMorgan failed to fulfill its legal obligation to investigate the ability of Jefferson County sewer customers to pay the huge sewer rates inherent to the JPMorgan financing program. Therefore, Jefferson County issued twice the amount of debt it could ever pay.

Considering the quantity and quality of evidence against the company, I would think a guilty verdict and order of appropriate restitution by JPMorgan to Jefferson County an easily decided case. However, SEC enforcement actions usually result in a slap on the wrist for the target without even demanding an admission of wrongdoing. This concern prompted the statement I issued petitioning the SEC to require JPMorgan, as a condition of any settlement, to assume responsibility for all swap termination payments and at least \$1.6 billion of outstanding Jefferson County sewer debt.

Deducting \$1.6 billion from our total debt to JPMorgan would leave outstanding only that amount of debt that Jefferson County can afford to pay under current rates. Further, I called on other banks involved to contribute to the reduction of debt because I believe that current rates are too high and possibly unlawful. The SEC holds the power to impose financial penalties, but I am less confident it possesses the motivation.

Regrettably, the SEC seems narrowly focused on the years 2002 and 2003 when, in fact, JPMorgan's malfeasance permeated every aspect of the county's sewer financing program from 1997 forward. Even within its selected period for investigation, the SEC appears to be concentrating on the far more simple frauds than the massive fraud that pervaded the sewer financings from the very beginning. Perhaps the SEC's timidity results from its failure to take action in 1997 when action might have prevented the massive fraud that later occurred.

In spite of reasons to the contrary, I must remain hopeful of the possibility of justice for the county, as no other options contain any element of justice for our taxpayers and ratepayers. The defeatist policies of a majority of the Jefferson County Commission disappoint me and sacrifice our citizens.

Encouraged by their advisers and a federal court to accept all costs as the county's burden alone, they refuse to hold bondholders, bond insurance companies and others to the deal they struck. The deal the banks and insurers signed promised them repayment limited to the net revenues of the sewer system. Period. They did not request nor were they promised any pledge of any other tax or revenue stream from Jefferson County. Other promises of settlements thrown about give rise to serious concerns in their lack of disclosure of details and, most significantly, inclusions of immunity to JPMorgan and others for all liability to the county for their malfeasance.

I fully believe the Legislature failed to pass legislation permitting use of a county sales tax for sewer debt service because lawmakers refuse to give Wall Street a pass for its bad behavior. For this, they deserve the highest praise of Jefferson County citizens, not the misguided criticism of Commission President Bettye Fine Collins and The Birmingham News. I commend lawmakers for adhering to their consciences and principles of fair play at a time of uncommon pressure to do otherwise.

To restore faith in our regulatory system and its reputation, the SEC needs to demonstrate comparable strength and commitment to justice. Ordering JPMorgan to restore what it plundered from the people of Jefferson County while the SEC was asleep at the wheel would be a significant step forward. There is more at stake here than the future of Jefferson County; there is also the integrity of the SEC.

Jim Carns, a member of the Jefferson County Commission, is commissioner of Environmental Services.

E-mail: carnsj@jccal.org

Categories:

Comments

Footer