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To Our Clients

Underwriters Due Diligence

The Seventh Circuit Court of Appeals has added another chapter to the saga of John Nuveen & Co. and the fraudulent commercial paper issued by Winter & Hirsch and sold by Nuveen. This chapter holds that the reasonable investigation or reasonable care standards imposed on underwriters by the Securities Act of 1933 include a requirement that an underwriter investigate the possibility of fraud. According to the Seventh Circuit this requirement is not met merely by an underwriter relying on certified financial statements. The decision highlights the underwriter's need to design a due diligence program for each offering, whether stock, bond or commercial paper, specially tailored to the particular issuer. While not involved in the Nuveen case, the decision points up the vulnerability to liability being created by the decline in due diligence in connection with S-16 registration statements. Sanders v. John Nuveen & Co., CCH Fed Sec. L. Rep. ¶97,372 (7th Cir., Apr. 29, 1980)

M. Lipton