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SEC Could Halt Muni Bond Sales.

CHICAGO – The Securities and Exchange Commission will probably use emergency court action to stop state and local governments from selling municipal bonds if it thinks their offerings are fraudulent, an enforcement division official told bond lawyers meeting here.

Kevin Guerrero, a senior counsel at the muni and public pensions unit in the SEC's enforcement division made the comments during a panel discussion at the National Association of Bond Lawyers' Bond Attorneys' Workshop conference. Guerrero referenced the commission's June enforcement action against Harvey, Ill., when the SEC went to court and filed a successful request to block a planned debt issue by the Chicago suburb after it and its Comptroller, Joseph Letke, allegedly engaged in a several-year fraudulent scheme to divert bond proceeds for improper, undisclosed purposes.

While it is not unusual for the commission to seek emergency action from a court to restrain a party from making a fraudulent offering, Guerrero noted the Harvey, Ill. case was the first time the commission had done so in the muni market. The SEC found the alleged fraud in a previous offering, and when it discovered an upcoming offering during the course of the investigation, it moved to block a muni sale for the first time.

"I don't think it will be the last," Guerrero warned.

The SEC lawyer also reinforced the SEC's stance of offering minimal concrete guidance on participation in its Municipalities Continuing Disclosure Cooperation initiative, which offers lenient settlement terms to issuers and underwriters who self-report instances in the last five years in which their official statements falsely claimed compliance with their continuing disclosure obligations. NABL members and issuers have asked for more guidance from the SEC about the MCDC, including information on both what the commission might consider to be "material" disclosure failures as well as procedural guidance on how to submit the reports.

Guerrero continued to deflect requests under questioning from attending bond lawyers. While the deadline for underwriters to participate has passed, attorneys are still interested in how issuers should process their filings, which are due by Dec. 1. Some bond lawyers have questioned whether only the most flagrant violations should be submitted under the MCDC.

"Is it better to just send in the stinkers?" asked Bracewell & Giuliani partner Paul Maco, who was on the panel.

Guerrero said issuers need to use their own best judgment, but added that the SEC thinks it is reasonable to use a "bucket" approach to classify some submissions as very obvious violations and others as borderline. He added that issuers who have had their deals reported by their underwriters could choose to send the enforcement division a letter making the case that a deal didn't include an enforceable violation. The SEC can't offer much guidance beyond that on how issuers should organize their deals for submission, he said.

The NABL conference concludes Friday.

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