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SEC Director Describes Enforcement Activities In The Public Finance Market: Cadwalader

SEC Enforcement Director Andrew J. Ceresney outlined agency enforcement activities in the public finance market. At the Securities Enforcement Forum 2016, he described current efforts as “essentially divided into two significant areas – municipal securities and public pensions.”

Mr. Ceresney detailed SEC specialized enforcement activities in public finance as:

- creating the Public Finance Abuse Unit, which “has had a clear, measurable impact in this area”;
- pursuing investment frauds that use municipal securities or other public finance instruments as vehicles for the schemes; and
- conducting enforcement sweeps, most prominently through the Municipalities Continuing Disclosure Cooperation (“MCDC”) Initiative.

Mr. Ceresney stated that many recent SEC enforcement actions represent “first-of-their-kind” actions such as: (i) enjoining bond offerings; (ii) imposing penalties against municipal issuers; (iii) enforcing controlling person liability and conduct-based injunctions against public officials; and (iv) charging the SEC’s newest class of registrants: municipal advisors. SEC Enforcement also has increased its focus on coordinating with criminal authorities, noted Mr. Ceresney.

In addition, Mr. Ceresney talked about the impact SEC “actions in the public finance space have had on the market.” These include: (i) increased issuer compliance with continuing disclosure obligations; and (ii) improved general awareness among market participants about their obligations under securities laws. He concluded that “this change in the tone of enforcement is here to stay.”

Commentary

There is inherent political tension when federal regulators seek to bring enforcement actions against local government officials, particularly if those actions may impair the local governments’ ability to get to the capital markets. That tension raises a question: does the SEC have the ability to take action against local elected officials who make overly optimistic statements as to the financial condition of municipal entities?

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

