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Clayton Would Make Enforcement of Individuals a Priority.

WASHINGTON – Jay Clayton would continue the trend seen in municipal bond cases of taking enforcement actions against individuals, if confirmed as Securities and Exchange Commission chair by the Senate.

Speaking to members of the Senate Banking Committee at his confirmation hearing on Thursday, Clayton, a lawyer with Sullivan & Cromwell in New York who has represented large investment banking firms like Goldman Sachs, said that he believes individual accountability in enforcement cases is a key to effective commission oversight.

“Individual accountability is extremely important, not only to get rid of bad actors but [to set] a tone for the industry,” he said, adding that individual prosecution in the white collar area is a “wonderful deterrent.”

Clayton told committee members that he is “100% committed to rooting out any fraud and shady practices” in the financial system and that he recognizes “that bad actors undermine the hard-earned confidence that is essential to the efficient operation” of the capital markets.

Clayton’s focus on individual enforcement, though not specifically directed at the municipal market, echoes muni-related statements and actions of SEC officials, including former chair Mary Jo White and former director of enforcement Andrew Ceresney. The majority of the muni-related cases the SEC has pursued against firms and issuers in recent years have included actions against individuals who the commission alleges played key roles in the violations.

During White’s and Cerseney’s tenure, the SEC for the first time, used the “control person liability” section of the federal securities laws in a municipal case and Ceresney, in a speech last year, said muni market participants shouldn’t be surprised if they see it used again. The control person liability section of the Securities and Exchange Act of 1934 allows the SEC to hold public officials responsible for violations based on their control of the municipal entity that engaged in the fraud. The SEC used it in two 2014 actions, one against the former mayor of Allen Park, Mich. and the other against the mayor of Harvey, Ill.

Mark Zehner, deputy director of the SEC enforcement division’s public finance abuse unit, told muni market participants at a conference at the end of October that they should expect to continue seeing enforcement actions against investment bankers and issuers involved in federal securities law violations. He said the focus on individuals stems from a concern before his unit was created in 2010 that the muni market wasn’t getting the enforcement division’s intended message about the importance of complying with federal securities laws.

“You should expect that, whenever we are looking at the work of an investment banking firm, it’s not going to simply be with respect to the firm,” Zehner said at the time, adding that considering actions against individuals is no longer a trend but a given.

Senators on the committee generally complimented Clayton on his stated devotion to strictly

enforcing the law, but some Democrats like Sen. Elizabeth Warren, D-Mass., questioned whether his past involvement with major Wall Street firms may hinder the SEC's enforcement abilities.

Warren raised the possibility that there would be a split between the SEC commissioners in an enforcement decision from which Clayton would have to recuse himself because of past ties to the parties involved. That would lead to a firm or individual avoiding enforcement, Warren said.

Clayton downplayed the problems that might result from any recusals and said that they would not impact his focus on individual accountability.

Republicans on the committee generally complimented Clayton on his past experiences and focused on his plans to promote capital formation. Senators also asked several times about potential regulatory rollbacks given Trump's past speeches and executive orders aimed at reducing regulations.

While Clayton avoided direct comments about deregulation, he said he has "a real problem with regulations that are unnecessarily complex" and that reducing complexity and creating clarity in rulemakings is very important.

The Bond Buyer

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