

# Bond Case Briefs

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## Charter School Bonds Under Scrutiny: Procopio

### **SEC to Charter Schools: Avoid these risks when you engage your financing team**

If you've financed a school facility - or you're thinking about it - the SEC is watching (out for) you and the financing team you hire. They've been going after unregistered advisors who have provided inadequate or conflicting advice to charter schools, exposing them to financial, reputational and legal harm.

A charter school seeking to finance school facilities will find no dearth of financial consultants and professionals offering advice about its financing options and how to navigate the process. School governing bodies and executive officers may not realize that these services are regulated under the federal securities laws enforced by the Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB). Likewise, schools may not realize which advisors owe them a fiduciary duty (to put the school's interests first), and others who have no such duty.

For several years, the SEC has examined charter school bond financings and taken action against firms and individuals who may have violated federal laws and regulations in providing their services to charter schools. Such investigations can occur years after the bond transaction. The SEC's enforcement initiatives have led the SEC Office of Municipal Securities, Public Finance Abuse Unit, to issue an informational bulletin "*What Charter Schools Should Know About Municipal Advisor Regulation*," available [here](#). The bulletin provides links to resources, including SEC and MSRB lists of registered municipal advisors, making it easier for a charter school to determine the status of people and firms offering them advice about financing school facilities. Clearly, the SEC is prioritizing its examination of charter school bond financings - a process that can consume a school's scarce resources (e.g., time and money).

Recently the SEC charged a charter school advisory firm for failing to timely and fully disclose material conflicts of interest in over \$500 million of bond issues for charter schools. In September, the SEC won a judgment in a case involving fee-splitting and violations of fiduciary obligations.

### **Two excerpts from the bulletin:**

#### **Charter Schools Are Strongly Encouraged to Work with Only Registered MAs**

A charter school should be concerned about the risks of working with an unlawfully unregistered firm or individual because such unregistered firm or individual:

- Could be operating a business in violation of federal law;
- May have a history of legal violations or conflicts of interest that are unknown to regulators and potential clients; or
- May have not taken or passed the necessary professional qualification exams, may not receive continuing education training, and may not be supervised by qualified personnel.

These risks mean that a charter school working with an unregistered individual or firm might receive inadequate advice and potentially even conflicted advice. This could result in negative

outcomes including, but not limited to, a charter school choosing a method of financing that is costlier and less desirable than another option, unfair pricing in a municipal bond issuance, or other financial, reputational, and legal harms.

SEC staff is concerned that charter schools are particularly vulnerable to potential harm from unregistered MAs. Although the requirement to register as an MA has been in place for over ten years, the SEC has filed a number of enforcement actions that involve unregistered firms and individuals who provided MA services to charter schools (see, e.g., [summaries of SEC enforcement actions against charter school advisors](#)).

and:

### **Charter Schools Are Strongly Encouraged to Report Potential Unregistered MA Activity or Other Potential MA Misconduct to the SEC**

If you become aware of potential unregistered MA activity or other potential MA misconduct, SEC staff strongly encourages you to submit a tip, complaint, or referral (TCR) to the SEC by [following the instructions](#). A TCR may lead to a SEC enforcement action and may be submitted anonymously.

Procopio attorneys have decades of experience with tax-exempt bond financing and SEC enforcement activity. We provide legal advice to charter schools through all stages of the facilities financing process, as well as their ongoing responsibilities in compliance with federal securities and tax laws and regulations. Procopio also advises charter schools in responding to SEC enforcement investigations, whether conducted as informal interviews or official subpoenas for documents, correspondence and other evidence that may be relevant to the investigations.

If you have any questions or concerns about these matters and how Procopio might help, please feel free to [contact us](#).

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### **About the Author**

#### *Of Counsel*

Chip represents charter schools financing school facilities in bond and loan transactions. He counsels clients who need to comply with federal tax and securities laws and regulations, including schools involved with investigations or responding to official enforcement actions and the concerns of lenders and bond investors. Chip’s practice grows from decades of work with California educators, cities, agencies and special districts with projects including public and private schools, mixed use development, affordable housing, municipal utilities, pension and retirement benefits, healthcare, cultural and recreational facilities, transportation infrastructure, green power, water and wastewater facilities, open space preservation, land development and equipment leasing.