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SEC's Top Cop: More Muni Enforcement, Not Less.

NEW YORK — The municipal market should expect increased attention from the Securities and Exchange Commission's enforcement division, with a focus on pension fund abuses and pay to play violations, and undisclosed conflicts of interest, the SEC's top cop said Monday.

Andrew Ceresney, director of the SEC's division of enforcement, made those comments while speaking on a muni panel at the Securities Industry and Financial Markets Association's Annual Meeting in Manhattan. Ceresney said the enforcement division's municipal securities and public pensions unit has set important precedents with first-of-their-kind enforcement actions in recent months, and will continue to be a growing presence in trying to affect market behavior.

"I think it's fair to say this is a place we're here to stay," Ceresney said, adding that the SEC will continue to look for opportunities to hold individuals personally accountable for their roles in breaking federal securities laws. The SEC scored a major first last week when it charged the mayor of Allen Park, Mich., and extracted a financial penalty from him for his role in controlling the city and lower-level personnel who misled investors with false language in offering documents.

"From my perspective, the most effective deterrent is individual liability," Ceresney said.

Ceresney also announced that the SEC will be focusing on ramping up its partnerships with law enforcement agencies when criminal prosecution could be appropriate.

Kent Hiteshew, director of Treasury's State and Local Finance Office, urged dealers to be familiar with the SEC's 2012 comprehensive muni market report, which foreshadows many of the regulatory developments of the past two years.

"The industry should be more cognizant of how the market is perceived by policy makers," Hiteshew said, urging market participants to become more engaged in the regulatory process. There is a sense among federal agencies that the muni market has not been historically subject to the same level of scrutiny as corporate and other capital markets.

Chris Hamel, managing director and head of the municipal finance group at RBC Capital Markets said the top threat to his business is the attempt of regulators to alter its business practices through new rules and enforcement firsts.

"There is a certain pride that the SEC is taking in its regulatory enforcement," Hamel said, noting Ceresney's emphasis on precedent-setting cases. "Those kinds of firsts worry me."

Asked whether the regulatory regime for the muni market should change, Ceresney said the commission's enforcement actions play an "outsized role" because the regulatory system is not as robust for munis as it is in other markets. The Tower Amendment, which was added to the Securities Exchange Act of 1934 in the mid-1970s, prohibits the SEC and Municipal Securities rulemaking Board from requiring issuers to file documents with them before selling munis.

"We certainly are upping our scrutiny in this area," he said.

The panel also discussed the future of the market. Hamel said issuers could gravitate toward public-private partnerships if Congress decides to limit or eliminate the value of the muni tax exemption.

He said it is hard to know yet what the effect of new municipal advisor regulations will be, as the SEC only approved its MA registration rule a year ago and many of the MSRB's rules are not yet effective. Ultimately, Hamel said, market participants have to understand that there is no going back to less regulatory days of 2007.

"There is only moving ahead," he said.

THE BOND BUYER

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NOV 10, 2014 3:57pm ET

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