

Bond Case Briefs

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A New Prosecutorial Frontier - SEC Seeks Bans on Municipal Officials: Burr & Forman.

The Securities and Exchange Commission ("SEC") was recently granted a preliminary agreement by a federal judge to bar a municipal official from participating in future bond sales. As reported by the Wall Street Journal, the move marks a new enforcement method utilized by the SEC and was undertaken pursuant to the SEC's broad antifraud authority. While the SEC has received preliminary agreement in one case, other requests are still outstanding.

The preliminary agreement awarded to the SEC involved a Harvey, Illinois city official who allegedly diverted municipal bonds for undisclosed purposes. The city official refused to settle the claims with the SEC and did not respond to the SEC's lawsuit against him. As a result of the official's failure to respond, the court preliminarily approved the agreement to bar the official from participating in future municipal-bond sales.

The Harvey, Illinois enforcement action coincides with another ground-breaking action brought by the SEC against the City of Allen Park, Michigan and two former Allen Park city officials. In that action, the SEC is seeking to settle fraud claims against all of the parties arising from municipal bonds issued to finance a movie-studio project. The officials allegedly misrepresented the viability of the studio project, and investors relied on the false information in purchasing the bonds. The studio project subsequently failed, and the bonds suffered losses as a result. The SEC's settlements with the Allen Park officials included requests that the officials be banned from future municipal-bond transactions. Although the settlements have not yet been approved by the court, approval is highly likely given the broad deference afforded to the SEC in this area.

Municipal officials and firms that assist with municipal-bond sales can expect continued and heightened scrutiny. Speaking at the annual meeting of the Securities Industry and Financial Markets Association in New York last month, the director of the SEC's enforcement division, Andrew Ceresney, publicly announced the SEC's intent to remain focused on municipal securities. In particular, Ceresney indicated that the focus of the SEC's increased enforcement in municipal securities would be on pension fund abuses, pay-to-play violations, and undisclosed conflicts of interest. Combined with the ongoing oversight of municipal advisors under the Dodd-Frank Act, both municipal officials and firms that assist with municipal-bond sales can expect continued and increased scrutiny. Moreover, officials and firms should be aware of the implications raised by the SEC's new enforcement techniques in this area, including whether officials who provide information on misrepresentations will receive any favorable treatment in a subsequent prosecution.

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by Kip Nesmith | Burr & Forman