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## **SEC's Ceresney Tells Muni Market Enforcement Focus is 'Here to Stay'**

WASHINGTON - The Securities and Exchange Commission enforcement division's heightened attention on the municipal market and application of new legal techniques to that enforcement are "here to stay," according to the commission's top cop, Andrew Ceresney.

Municipal market participants also shouldn't be surprised if they continue to see the SEC use new-to-the-market techniques like civil penalties for issuers, individual accountability under control person liability, and increased coordination with agencies investigating criminal conduct, he said.

Ceresney made his comments during a keynote speech at this year's Securities Enforcement Forum held here on Thursday.

While the SEC had pursued several larger actions related to munis and public pensions before 2010, Ceresney said, the creation of a specialized unit in that year to address misconduct related to the municipal market and public pensions "by every measure ... has paid off in a big way."

Since 2013, the SEC has brought enforcement actions against: 76 state or local government entities, including four states; 13 obligated persons; and 16 public officials. That compares to enforcement actions against 6 government entities, 6 obligated persons, and 12 public officials in the 10 years between 2002 and 2012.

The rise in enforcement actions has been coupled with "important" behavioral changes in market participants, Ceresney said.

For example, in an August 2015 case against Edward Jones, the firm, which was part of a syndicate, settled with the SEC over charges that, instead of selling new bonds to customers at the initial offering price as required, it took bonds into its own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began, according to the SEC.

Ceresney said the case prompted conversations about whether such activity was endemic to the market.

He also pointed to comments by market participants that the SEC's Municipalities Continuing Disclosure Cooperation initiative has made disclosure a top priority. The initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years in which issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The SEC's specialized Public Finance Abuse Unit plans to continue such work and may, over time, normalize some of the first-of-their-kind actions the market has seen.

Issuers, for example, "should not expect a pass on civil penalties," which are a recent development

in muni enforcement, Ceresney said.

The SEC first hit an issuer with a civil penalty in a November 2013 action against a public facilities district in the state of Washington. The commission has since reached a settlement with California's largest agricultural water district that included a \$125,000 fine and will have to act on a proposed \$1 million settlement with the city of Miami after a federal jury found the city guilty of securities fraud last month.

"Enforcement will scrutinize the nature of the issuer and the sources of funds available to pay a penalty and, with commission approval, seek penalties where appropriate," Ceresney said. "And in particularly egregious cases, we will pursue penalties even when the source of those funds is the taxpayer base."

The commission also intends to continue pursuing individuals under a section of the Securities and Exchange Act that allows the SEC to hold public officials responsible for violations based on their control of the municipal entity that engaged in the fraud, Ceresney said. It has pursued charges under the section's control person liability in two 2014 actions, one against the former mayor of Allen Park, Mich. and the other against the mayor of Harvey, Ill.

Ceresney also reiterated past indications that the SEC is coordinating more with criminal authorities on public finance matters, as it is doing in a pending case against Ramapo, N.Y., its local development corporation, and four town officials. The SEC is alleging the defendants covered up the town's deteriorating finances while pursuing a number of financings.

The commission also intends to work with units within the U.S. Attorney's Office and Federal Bureau of Investigation on public corruption matters.

"Our sense is that, where public officials are engaging in public corruption in other contexts ... we may also find there is corruption in the awarding of underwriting business or investment advisory contracts for public pension funds," Ceresney said.

## **The Bond Buyer**

By Jack Casey

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