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SEC Seeks Record Penalty Against Former Miami Budget Director: Holland & Knight

After a federal jury found the City of Miami's (City) former budget director guilty of defrauding investors in connection with a 2009 bond offering, the U.S. Securities and Exchange Commission (SEC) is seeking a record \$450,000 civil penalty against the former official – an amount that is nine times greater than any previous fine against a municipal official.¹

In addition, the SEC is seeking a permanent injunction that would bar the City's former budget director from violating anti-fraud provisions of federal securities laws in the future.

The official was found guilty on three of four counts involving violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, and that he aided and abetted the City's violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. The jury found that both the City and its former budget director hid the City's declining financial position by using inter-fund transfers to cover up a general fund deficit, information that was not disclosed to rating agencies or in three separate bond issues in 2009, totaling \$153.5 million.²

Through a settlement, attorneys for the SEC secured an injunction and a \$1 million civil penalty against the City for its role in the fraud.³ The SEC now argues that the former official should be fined \$150,000 for each of the three 2009 bond issues at question in the civil case.⁴

In its brief, the SEC stated that “a complete absence of both the sincerity of the former official's assurance against future violations and recognition of the wrongful nature of his conduct dictate that a penalty must be imposed.” The SEC gave no indication that the court should reduce the penalty because the former official “remains gainfully employed, earning, per his counsel, about the same amount as he did when he was the budget director.”⁵

The attorney representing the former budget director pushed back on that notion, saying in a court filing that his client “is a man of limited means who has no assets” and that “he has been financially ruined” fighting securities fraud charges.⁶

The significant penalties sought by the SEC against an employee of a governmental entity reflect the SEC's changing approach in holding individuals accountable. This is a relatively modern trend of the SEC, but the penalties sought against the City's budget director are unprecedented in the municipal context. This is consistent with the SEC's Municipalities Continuing Disclosure Cooperation (MCDC) Initiative in which it stated that settlements with a governmental entity did not preclude the SEC from seeking enforcement actions against the staff of such entity. The SEC is clearly signaling that it will hold not only an issuer accountable for bad disclosure but will seek personal penalties against staff as well.

Footnotes

1. See The Bond Buyer article [“SEC Seeks a Record \\$450,000 Penalty Against Miami Official.”](#)

2. *Jury Verdict, Securities and Exchange Commission v. City of Miami and Michael Boudreaux, Case No. 13-22600-CIV-ALTONAGO/O'Sullivan, (S.D. Fla. September 14, 2016.)*

3. See Miami Herald article [“SEC wants \\$450,000 penalty against former Miami budget director.”](#)

4. *Id.*

5. See The Bond Buyer article “SEC Seeks a Record \$450,000 Penalty Against Miami Official.”

6. See The Bond Buyer article [“Former Miami Official Says SEC Penalty Would Mean Financial Ruin.”](#)

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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