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SEC to Focus on Issuer Disclosure, Municipal Advisors in 2020.

Enforcers will have a strong focus on municipal advisor rules and timely issuer financial disclosure in 2020.

Securities lawyers and muni market participants told The Bond Buyer where the Securities and Exchange Commission could be headed in the next year. One thing is for sure, sources agreed — the SEC will continue being active in the municipal advisor space.

“Speaking generally about enforcement, I think you will continue to see us being very active in the MA space,” LeeAnn Gaunt, chief of the SEC’s Public Finance Abuse Unit, said in an email. “We’re primarily focused on situations involving breach of fiduciary duty, but we are also prepared to enforce the MA registration and professional qualification requirements because they are so important to the overall MA regulatory regime.”

The past year saw a few cases involving MAs, including one involving troubled Harvey, Illinois. The SEC alleged that Mississippi-based municipal advisor Comer Capital Group LLC and its managing partner, Brandon L. Comer, 37, failed to protect its client in a January 2015, \$6 million bond offering for the Harvey Public Library District. Comer has denied wrongdoing.

The SEC also plans to focus on issuer disclosure — a topic SEC Chair Jay Clayton has spoken publicly about several times.

“From an enforcement perspective, issuers who violate the anti-fraud provisions in connection with their disclosures are a very serious concern and we’ll continue to focus on those kinds of violations,” Gaunt said.

The SEC plans to also continue its focus on broker-dealer abuses, including abuses of the retail order period in new offerings, Gaunt said. The SEC considers abusive practices in the retail order period to be serious because of the direct effect on retail investors, whom the SEC prioritizes protecting.

Most of the SEC’s muni securities cases involve conduct that poses a risk of harm to Main Street investors, such as issuer disclosure and broker-dealer cases as well as misconduct by MAs, Gaunt said.

Conflicts of interest will continue to be a focus for the SEC, said Peter Chan, a partner at Baker McKenzie and former SEC enforcement lawyer.

“I think a unifying theme is that any time the staff sees an underlying narrative — conflicts of interest where appropriate benefits or interest affecting people’s decisions — that will continue to drive the staff to focus more on those areas,” Chan said.

Chan referenced the SEC vs Comer Capital and Brandon Comer case. The situation arose from

market contamination caused by a cash-strapped Chicago suburb, Harvey, that defaulted on millions of dollars of bonds and was the subject of a 2014 SEC enforcement action.

The SEC alleged that Comer Capital and Comer's actions led to the district receiving a price for its bonds that was not fair and reasonable, causing the borrowing costs to be substantially higher than they should have been.

In the SEC's complaint against Comer, the staff spent a good amount of time discussing the conflict of interest between the municipal advisor and the underwriter, Chan said.

Comer and Comer Capital allegedly did not give advice on selecting an experienced underwriter and did not find appropriate pricing for the bonds. IFS Securities, the underwriter, allegedly did not act with reasonable care and sold the bonds to another broker-dealer at a price that was not fair and reasonable, the SEC said. IFS recommended Comer as an MA and the district hired them without conducting other MA interviews.

The SEC staff could have just focused on Comer's alleged failure to do its job, Chan said, but they spent quite a bit of time explaining the narrative as to how Comer got selected.

"As the staff described it, because the municipal advisor had allegedly asked the underwriter to intervene and get them higher fees, that created a conflict of interest to the point where the MA owed the underwriter," Chan said. "I think that's a big part of the staff's ongoing focus."

Chan also predicts an uptick in municipal advisor cases in 2020 due to the continuance of MA examinations. Those examinations can lead to referrals for enforcement, Chan said.

"Now that there has been a passage of time for the examiners to have examined a number of municipal advisors, my suspicion is that that will also naturally lead to more data that results in referrals of enforcement," Chan said.

The SEC has also shown concern about transparency in the pricing of bonds, which Chan said will continue into 2020.

Some MA firms have not been examined at all yet, said Michael Decker, consultant to Bond Dealers of America.

"We've got this robust regulatory scheme in place for municipal advisors, so let's make sure that the MA community is in compliance," Decker said.

MAAs now have an increased awareness in the formality of working in a regulatory and regulated environment and what that means for them, said Leo Karwejna, managing director and chief compliance officer at PFM.

The market is now seeing more well-developed enforcement actions, so it's not cases like an MA forgot to register, but is now focused on fiduciary duties, Karwejna said.

In the time since the MA regulatory groundwork in 2014, the SEC and the Financial Industry Regulatory Authority have become more conversant when examining MAs.

"This isn't just about having them color in between the lines, it's more focused on now, did you use the right punctuation and pronunciation," Karwejna said.

An upcoming election could change the SEC's dynamic on enforcement cases. The SEC has been

criticized in the past for bringing many cases against small issuers and there was a political concern that a new MA regime would cause the SEC to beat up on “small enough to jail parties because so many MAs are so small,” said Dave Sanchez, senior counsel at Norton Rose Fulbright US LLP.

Next year could bring political pressure to end this practice.

“Depending on what happens in the next election, you may see political pressure on the SEC to stop bringing these kinds of enforcement cases that make up the majority of their playbook that are just against small issuers and small entities,” Sanchez said.

If there is a Democratic president or a Democratic Congress, more pressure could be applied.

“(Democrats) want to see the SEC use their resources in a way that is more meaningful to the market versus again, beating up on small players,” Sanchez said.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 01/02/20 09:31 AM EST

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