

Bond Case Briefs

Municipal Finance Law Since 1971

SEC's FY 2021 Enforcement was Robust in the Muni Arena.

The Securities and Exchange Commission's enforcement results for fiscal year 2021 highlight the SEC's focus on disclosure in the municipal finance space.

The results, released late Thursday, show the Commission overall filed 7% more enforcement actions in 2021 than in 2020. It also awarded over \$564 million to more than 100 whistleblowers, surpassing \$1 billion over the life of the SEC whistleblower program.

Twelve of the 697 SEC enforcement actions this year were categorized under public finance abuse. That represented 2% of the total enforcement actions and is consistent with the 12 public finance abuse actions taken in the previous fiscal year.

Overall, of the total filed enforcement actions, 434 were new, 120 were against issuers for delinquent filings, and 143 were for follow-on administrative proceedings.

The SEC also obtained judgments for close to \$2.4 billion in disgorgement, a more than 30% decrease from FY 2020. It also won over \$1.4 billion in penalties, which represented a 33% increase over the previous fiscal year.

"As these results show, we go after misconduct wherever we find it in the financial system, holding individuals and companies accountable, without fear or favor, across the \$100-plus trillion capital markets we oversee," SEC Chair Gary Gensler said in a statement.

While total actions in 2021 decreased by 3% from 2020, the SEC said the new actions "spanned the entire securities waterfront," and addressed what the Commission described as "traditional and emerging areas."

For example, the SEC brought a number of first-of-their kind enforcement actions involving, for example, so-called DeFi technology, the dark web, and regulation crowdfunding.

In the public finance abuse category, the SEC brought its first enforcement actions of Municipal Securities Rulemaking Board Rule G-42 regarding duties of municipal advisors, when it alleged that Choice Advisors LLC and two of its principals, Matthias, O'Meara, and Paula Permenter violated their fiduciary duties.

The agency found that O'Meara and Permenter entered into a prohibited fee-splitting arrangement with their former employer without disclosing either the arrangement or their relationship with the underwriting firm, to their clients.

The SEC further alleged that Choice, O'Meara, and Permenter unlawfully engaged in municipal advisory activities when they were not registered with the SEC or the MSRB.

Permenter agreed to settle with the SEC without admitting or denying any findings.

Beyond Rule G-42, the SEC brought several other public finance abuse enforcement actions in 2021.

For example, the Commission charged RBC Capital Markets and two individuals with unfair dealing in municipal bond offerings. According to the SEC, RBC allegedly improperly allocated bonds for institutional customers and dealers, who then resold or “flipped” the bonds to other broker-dealers at a profit. RBC agreed to pay more than \$800,000 to resolve the charges without admitting or denying the SEC’s findings.

The SEC also charged a broker dealer and its former chief executive officer with failing to disclose a conflict of interest regarding a tender offer of municipal bonds and a school district and its former chief financial officer for allegedly misleading investors who purchased \$28 million in municipal bonds.

Speaking at a National Association of Bond Lawyers workshop in October, Natalie Garner, senior counsel in the SEC’s public finance abuse unit, described issuer disclosure as “a major [enforcement] priority” and said that the SEC will make every effort to hold responsible “issuers who have engaged in fraud or who mislead investors.”

Garner also said that the enforcement actions taken in recent years highlight the importance of disclosure requirements.

Lily Becker, partner at Orrick, with an extensive background in government investigations and enforcement actions, echoed that notion. “I think we can expect a continued focus on both annual and periodic disclosures.” Becker said.

Becker explained that “because the SEC looks at both omissions and misstatements, entities should be thinking carefully about both including all material information and making sure information disclosed is accurate at the time of the disclosure.”

Securities lawyer Michael Botelho, partner with the Hartford, CT-based law firm of Updike, Kelly & Spellacy, acknowledged that enforcement activity in the municipal arena was fairly robust this past year.

“The SEC brought some high profile actions against municipal issuers and their key officials for inaccurate and incomplete disclosure and for misleading investors in their offering documents,” Botelho pointed out.

“Under the leadership of Chairman Gensler, I expect that the SEC will remain active in bringing new investigations and enforcement actions in this area and possibly exceed last year’s output,” Botelho said.

BY SOURCEMEDIA | 11/19/21

By Kelley R. Taylor