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Retired SEC Enforcer Zehner Reflects on Landmark Muni Cases.

Mark Zehner spent 25 years dropping the hammer on municipal securities wrongdoers, helping to firmly establish the Securities and Exchange Commission's enforcement of the laws in the muni market.

His career saw the SEC bring cases against negligent issuers and audacious fraudsters, broker-dealers and bond lawyers. He still views the municipal market as a place populated overwhelmingly by good people.

"Fundamentally, the vast majority of muni issuers are trying to do the right thing," Zehner said. "The vast majority of underwriters and municipal advisors are trying to do the right thing."

Zehner, 62, retired as the deputy chief of the SEC's public finance abuse unit at the end of November. He talks quickly and laughs easily, but there's no mistaking how seriously he has taken the work to which he devoted the majority of his professional life. He can recall the details of cases dating back 15 or more years, and he speaks about them with clear conviction.

"We call 'em like we see 'em," he said.

Zehner began his SEC tenure in 1997 as an attorney fellow in the SEC's Office of Municipal Securities, where he got a taste of the life of an enforcer through examining the yield-burning scandal of the 1990s. Working in Washington, D.C., but maintaining his home in Philadelphia, Zehner commuted to and from work by train daily before finding a home in the SEC's Philadelphia office.

Zehner's career as an enforcer spans a number of landmark cases that created precedents in municipal securities enforcement. In a phone interview shortly after his retirement, Zehner discussed a number of those cases and offered some thoughts on the future.

The first cases Zehner named as significant were two that he said served as a sort of announcement the SEC wouldn't hesitate to bring charges in the municipal bond space.

The SEC's 2004 action against the Dauphin County, Pennsylvania General Authority saw the commission charge the issuer for failing to disclose to potential bondholders that the tenant responsible for more than half of the parking revenues backing its 1998 bonds had already planned to leave that space at the time the bonds were issued. The SEC found this was material to would-be purchasers of the bonds, and should have been included in the official statement.

Around the same time, the SEC also announced an administrative action against broker-dealer L. Andrew Shupe and bond lawyer Ira Weiss for alleged violations of the antifraud provisions of the federal securities laws in connection with a June 2000 offering of tax-exempt notes by the Neshannock Township School District, located in Lawrence County, Pennsylvania.

The SEC found that the true purpose of the offering was a scheme by underwriter Shupe to secure \$225,000 dollars of arbitrage profits by investing the proceeds for three years without spending them on capital projects, even though the tax-exempt status of the bonds depended on the authority reasonably expecting to spend down the proceeds in that time. The SEC further alleged that Weiss also committed fraud by nonetheless rendering an unqualified opinion the notes were tax-exempt and that nothing had come to his attention to lead him to believe the offering documents were inaccurate.

The case against Weiss became a months-long affair of appeals, eventually ending with the SEC's triumph in the U.S. Court of Appeals for the District of Columbia.

These cases served as an announcement of the SEC's readiness to act when it saw cause, Zehner said, while other cases established still more precedents.

Perhaps no enforcement pursuit of Zehner's career created quite as much of a muni market splash as the Municipalities Continuing Disclosure Cooperation Initiative, or MCDC. Launched in March 2014, the MCDC promised underwriters and issuers lenient settlements if they self-reported instances where issuers falsely said in offering documents they were in compliance with their continuing disclosure agreements.

The initiative was the brainchild of then-SEC enforcement lawyer Peter Chan, who is now in private practice. But Zehner said the MCDC, like all of the muni actions of the past decade, was a triumph of the work of the whole public finance abuse unit.

"That was an incredible team effort," Zehner said.

The MCDC inspired fierce debate among issuer officials and bond lawyers, some of whom accused the SEC of being too aggressive in targeting issuers. In total, the initiative led to settlements with 72 issuers from 45 states. In addition, 72 underwriters representing 96% of the underwriting market by volume paid a total of \$18 million of MCDC settlements.

Zehner said he believes the MCDC, which wrapped up in late 2016, had a positive impact on issuer disclosure practices in the short term. But it remains to be seen whether that will stick, he said.

Zehner said looking forward, one might do well to examine the SEC's orders suspending two former KPMG auditors who approved and authorized the issuance of an unmodified audit opinion on The College of New Rochelle's fiscal year 2015 financial statements, despite not having completed critical audit steps and having been given information that raised serious red flags.

The school's controller had already faced SEC fraud charges for overstating the financial position of the now-defunct school. Bond lawyers said the KPMG cases were important, because the action showed that the SEC would hold professionals like auditors accountable for negligence even if they weren't complicit in underlying fraud.

"I think we will see more accounting cases going forward," Zehner predicted.

Zehner was complimentary of both the unit chiefs he served under since the SEC announced the creation of its specialized enforcement units, including what is now the public finance abuse unit, in 2010. Elaine Greenberg led the unit until 2013 when she left to enter private practice, and the unit has since been led by LeeAnn Gaunt.

Zehner's place as deputy chief has been filled by Rebecca Olsen, who had until recently been director of the Office of Municipal Securities.

As described by him, Zehner's future holds a break from the intellectual challenge of securities law. He said he wants to travel and devote more time to his work in the Catholic Church. Much of Zehner's work is through the Saint Vincent De Paul Society, a nearly 200-year old society dedicated to providing help to the needy.

By Kyle Glazier

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