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SEC Continues Scrutiny of Municipal Bond Offerings: Goodwin Proctor

The SEC recently brought fraud charges against [Sterlington, Louisiana and its former mayor](#) and separately against [Rochester, New York and its former executives and Rochester's municipal advisors and principals/owners](#) for misleading investors related to their respective bond offerings.

At a high level, the SEC alleged (collectively between the two matters):

1. Investors were misled because offering documents included false or outdated financials and city officials and municipal advisors failed to disclose material facts related to the offerings.
2. Claims against city officials for misleading a credit rating agency by failing to disclose a projected budget shortfall, failing to further inquire about financial conditions despite knowledge of financial distress, and failing to apprise investors of the associated risks.
3. Activity by an unregistered municipal advisor as well as substantive claims of misleading investors, breaching fiduciary duty, and failing to disclose material conflicts of interest.

These cases are only the latest in a string of SEC settlements with municipalities and their advisors, including those resulting from the agency's 2016 "MCDC" Initiative against dozens of municipal issuers and underwriters related to their failure to satisfy continuing disclosure obligations under Exchange Act Rule 15c2-12. Unlike the MCDC actions, the Sterlington and Rochester cases did not implicate the underwriters of the bond offerings (at least not yet).

Lapses in disclosures in the municipal securities market has been, and will continue to be, an area of SEC focus. This should come as no surprise given that the Division of Examinations included municipal securities as an area of focus in its [2022 examination priorities](#). A recent risk alert from the Division of Examinations also summarized staff's observations from municipal advisor examinations, including noting deficiencies in registration, conflicts disclosures, and recordkeeping.

Other noteworthy takeaways from the Sterlington and Rochester cases include:

- The SEC made its usual assertions of violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.
- The SEC also alleged that Rochester's municipal advisors and its principals violated MSRB Rules G-17, G-42, and G-44 and Exchange Act Section 15B(c)(1).
- The SEC settled with the town of Sterlington and, interestingly, imposed no fines or other penalties against the city. The SEC took into account Sterlington's corrective measures to enhance its internal controls and financial oversight (establishing a committee to oversee and approve borrowing, applying, and disbursements of funds).
- Sterlington's former mayor is contesting the charges against him, in which the SEC is seeking a fine and a ban from engaging in future municipal securities offerings.
- Sterlington's municipal advisor and its owner settled with the SEC and agreed to pay ill-gotten gains, accrued interest, and fines, which are yet to be determined by the court (advisory fees for the bonds sold totaled \$26,303).

- In the Rochester case, the city and its municipal advisors and owners are contesting the SEC's allegations. The SEC is seeking fines and payment of ill-gotten gains and accrued interest by the municipal advisor based on the alleged violations.
- Rochester's former CFO settled with the SEC and consented to a \$25,000 fine and a ban from engaging in future municipal securities offerings.

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