Bond Case Briefs

Municipal Finance Law Since 1971

SEC Widening Net In Municipal Bond Market Fraud Cases.

Recent Securities and Exchange Commission enforcement actions signal that regulators are widening their net to charge more types of municipal market participants as so-called gatekeepers against misconduct.

So said panelists Thursday at the National Association of Bond Lawyer's annual conference in Chicago.

The SEC's enforcement division and Public Finance Abuse Unit activities are "reaching all participants in the municipal market," said Drew Kintzinger with Hunton Andrews Kurth LLP. "Under the current chairman [Gary Gensler], they're taking an aggressive approach."

The SEC has made headlines recently for a number of audit-related charges, including a recent settlement with a Louisiana-based auditor for violating antifraud provisions in connection with a Louisiana school board's 2019 audit.

The enforcement actions show how the SEC is focusing on gatekeeper accountability for professionals such as auditors and lawyers, who regulators see as first lines of defense against misconduct.

"We've brought several cases in the recent past involving [auditors], and we consider them gatekeepers, so it's an important area for us to look at," said Brian Fagel, assistant director of the SEC's Public Finance Abuse Unit.

The notion of gatekeepers also applies to lawyers, said Fagel, echoing comments made Wednesday by David Sanchez, director of the SEC's Office of Municipal Securities.

"We definitely would consider, as a whole, lawyers to be gatekeepers and it's certainly something to think about," he said.

"Nothing is off the table in terms of looking at who we can potentially charge."

Gensler emphasized the commission's focus on the role that securities lawyers play as gatekeepers in a November 2022 speech to the Practising Law Institute, said Kintzinger.

Gensler said that the SEC "views lawyers as positions of trust in our process and if you have a client who's taking a course of action that brings them up to the line, keep them back from the line," Kintzinger said.

"It helps us understand over the past year how enforcement has been focused on gatekeeper activity, auditors in particular," Kintzinger said.

The Louisiana auditor settlement featured a broad injunction against participating on audits of any documents that may be posted to EMMA, Kintzinger noted. "It's a key auditor gatekeeper type of action, but it's very interesting to me that they really upped the ante on auditor behavior to include

negligence and fraud," he said.

Fagel said the case illustrated a "parade of bad activity" and that the auditor's actions were "egregious."

Another trend Kintzinger is tracking is the public finance abuse agency's "more aggressive use" of Section 17(a)(2) and (3) – as in the Louisiana case – to "charge fraud on municipal market participants," he said.

"It's a distinct trend" that illustrates an "aggressive use of enforcement," he said.

The SEC's case against the city of Rochester marks a case in point, in which the SEC, after settling with the school district's CFO, is going after the city and the city finance director, which regulators argue either knew or should have known about the district's underlying financial problems that brought the case in the first place.

"It's a fascinating case," Kintzinger said. "It's a case on the responsibility the city has for the school district" when issuing bonds on its behalf.

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL | 10/20/23 01:33 PM EDT

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com