

THE BOND BUYER

SEC enforcement actions emphasize issuers, Mas

By

[Connor Hussey](#)

Published

July 27, 2022, 2:58 p.m. EDT

The Securities and Exchange Commission's four enforcement actions this year were all leveled against municipal issuers, a signal that the Commission could be taking a more holistic approach when looking at municipal securities violations.

This year, the Commission has charged issuers and related officials from Rochester, New York, Crosby Independent School District in Harris County, Texas, Sterlington Louisiana and the chief administrative officer of Johnson City, Texas. While the SEC has historically brought cases against issuers, it has more traditionally focused on industry professionals.

"I don't think there's been a narrowing so much as to how they're pursuing enforcement, I think it's more that they're utilizing more tactics to pursue enforcement," said Ed Fierro, senior counsel at Bracewell. "They're using enforcement tactics and settlement terms that Chair Gensler has promoted in the past so this is in line with what we've been hearing."



"I don't think there's been a narrowing so much as to how they're pursuing enforcement, I think it's more that they're utilizing more tactics to pursue enforcement," said Ed Fierro, senior counsel at Bracewell.

Ernesto Lanza, then-acting director of the SEC's Office of Municipal Securities, indicated at GFOA's 2022 Winter Meeting earlier this year that the SEC was taking a closer look at [issuer disclosures](#) in relation to 15c2-12. While the muni office is not responsible for bringing enforcement cases, it provides expertise to other SEC offices, including enforcement.

"Unlike the previous two years, when most of the SEC's enforcement actively focused largely on financial advisors and underwriters, all of these four actions directly involved municipal issuers, their employees and in most cases, their financial advisers as well," law firm Orrick said in a recent alert to its clients.

The actions against the small town of Sterlington, Louisiana, and the chief administrative officer of Johnson City, Texas, both with populations of less than 3,000 residents, shows "that they are making a statement that they are going to be all over the market," Fierro said.

But securities violations can also occur outside of the contents of an official statement, and in the case of Johnson City and Sterlington, it's clear the SEC is going to be enforcing beyond what is disclosed.

“They're going beyond just your normal bond offering and charging fraud,” Fierro said. He also thinks it's notable that in the charges leveled against Sterlington and Rochester, their MAs were also charged.

The SEC pursued 12 enforcement actions against municipal market participants in 2021 and 2020, including a [first of its kind](#) action against Choice Advisors LLC and two of its principals, enforcing MSRB Rule G-42, engaging in unregistered municipal advisory activities.

In that sense, municipal advisors are already anticipating more scrutiny against them.

“We have been anticipating an increase in enforcement actions within our sector,” said Susan Gaffney, executive director of the National Association of Municipal Advisors. “For MAs, whether possible violations are identified through routine exams, or within the scope of broader investigations of other market participants and transactions, these cases highlight the need for MAs to ensure that their compliance programs are robust and well documented related to both administrative rule compliance and their client work.”

In her announcement of charges against Sterlington, its former mayor and its municipal advisor, Public Finance Abuse Unit Chief LeeAnn Gaunt emphasized that “it is long past time for financial advisors to municipal issuers to comply with the requirement that they must be registered with the Commission before they provide municipal advice, and we will vigorously pursue advisors who continue to flout those requirements.”

But the lack of underwriters represented in the four cases brought forward this year, could also signal a higher level of compliance after so many years of scrutiny from the Commission.

“This might be a natural consequence of underwriters really being under the gun in the past 5-10 years,” Fierro said. “If you're underwriting municipal securities now, I think you have an understanding that the SEC will be knocking on your door in connection with examinations,” he added. “I think the message has been heard through enforcement that they had to beef up their policies and procedures.”