

[Securities Regulation Daily Wrap Up, TOP STORY—S.D. Fla.: SEC wins jury trial against City of Miami, director in bond fraud, \(Sept. 14, 2016\)](#)

Securities Regulation Daily Wrap Up

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By [Lene Powell, J.D.](#)

In the first federal jury trial by the SEC against a municipality or municipal officer for violations of the federal securities laws, a jury in federal district court found the City of Miami and its former budget director liable on multiple counts of securities fraud in an SEC enforcement action in connection with 2009 bond offerings. The SEC charged the defendants with making false statements and concealing deficits in the city's general fund, giving a misleading impression of financial health to investors, in addition to violating a previous administrative order for similar conduct ([SEC v. City of Miami](#), Florida, September 14, 2016).

"We are very pleased by today's jury verdict holding the City of Miami, a recidivist violator of the federal securities laws, and its former Budget Director (Michael Boudreaux) liable for multiple counts of antifraud violations of the federal securities laws," [said](#) Enforcement Director Andrew Ceresney. The SEC anticipates that the court will also enter a finding that the City of Miami violated a 2003 cease-and-desist order.

Municipal bond fraud. In its 2013 [complaint](#), the SEC charged that Miami and the budget director made materially false and misleading statements about interfund transfers leading up to three 2009 bond offerings totaling \$153 million. Beginning in 2007, the city executed a series of transfers from its Capital Projects Funds to its General Fund, including a transfer of restricted fees. The director lied to the City Commission about the transfers, saying the funds were unallocated, and concealed the transfers in city internal records. The transfers falsely inflated the General Fund balance and maintained \$100 million in reserves in the General Fund, and ultimately led to more favorable ratings on the bond offerings.

In addition to false statements in the bond offering documents, the city and director also made material misrepresentations and omissions in the city's Comprehensive Annual Financial Reports (CAFRs). The SEC also [charged](#) the city with violating a 2003 administrative cease-and-desist order entered against it for similar misconduct.

Jury finds liability. The jury found that the City of Miami and the director violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, as well as Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5. The director was liable for aiding and abetting the 10(b) violations. In addition, the city was found to have violated Section 17(a)(1) of the Securities Act, concerning use of a fraudulent device or scheme in connection with the sale of securities, though the director was not. The jury also found that the defendants did not disclose relevant facts or seek advice from its auditing firm at the time, McGladrey & Pullen.

The case is [No. 1:13-cv-22600-CMA](#).

Attorneys: Amie Riggle Berlin for the SEC. Brian A. Dominguez (Cole, Scott & Kissane, P.A.) for City of Miami. Benedict P. Kuehne (Law Office of Benedict P. Kuehne, P.A.) for Michael Boudreaux.

Companies: City of Miami

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