

INSIGHTS

## Former Municipal Official in the Spotlight as SEC Files Complaint Charging Securities Fraud and DOJ Files Superseding Indictment Alleging Wire Fraud in Securities Offerings

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By: [\*\*Britt Cass Steckman\*\*](#)

On November 21, 2017, the U.S. Securities and Exchange Commission (“SEC”) filed a complaint charging Oyster Bay, New York (the “Town”), along with its former Supervisor and Chief Executive Officer, John Venditto, with defrauding investors in Oyster Bay’s municipal securities offerings by failing to disclose indirect loan guarantees the Town made for the benefit of one of the town’s concessionaires. The SEC complaint alleges that these indirect loan guarantees were provided to the concessionaire because of the concessionaire’s close relationship with Venditto and other town officials, cultivated in part through various forms of gifts, bribes, political support and kickbacks. Simultaneously with the SEC’s filing, the U.S. Attorney’s Office for the Eastern District of New York filed a superseding indictment that included securities fraud charges against Venditto.<sup>1</sup>

The complaint alleges that the Town agreed to indirectly guarantee four private loans, totaling over \$20 million, for a long-standing concessionaire and restaurateur who was a personal friend of Venditto. The SEC alleges that the Town’s resolution approving the loan guarantee structure was drafted to conceal the indirect guarantees from prospective investors and from personnel who assisted in preparing the Town’s securities offerings and financial statements. Further, the complaint alleges that the Town failed to disclose these indirect guarantees in connection with 26 securities offerings it made from 2010 to 2015, and that the eventual disclosures the Town made following the indictment of the concessionaire in September 2015 were allegedly deficient and misrepresented the concessionaire loan guarantees as unauthorized and unenforceable. These misrepresentations provided prospective investors, rating agencies, underwriters, and the public with a false picture of the Town’s financial condition and the quality of its management.

The SEC complaint seeks an order permanently enjoining Venditto from participating in a municipal securities offering, enjoining the Town from selling municipal securities for five years without following the recommendations of an independent consultant, and assessing an unspecified amount of civil penalties.

The SEC’s complaint charges the Town with violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. Venditto is

charged with violations of Section 17(a)(1) and (a)(3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5. He also is charged with liability under Section 20(a) of the Exchange Act as a controlling person for the violations by the Town, and with aiding and abetting violations.

These charges continue the SEC's practice of working jointly with the Department of Justice to pursue civil and criminal actions, as well as its recent pattern of pursuing entities and individuals simultaneously, charging individuals under control person and aiding and abetting theories of liability.<sup>2</sup> Click the following links to view the [complaint](#) and the [superseding indictment](#).

Should you have any questions about SEC, DOJ, FINRA or other governmental enforcement issues, please reach out to [Paul Maco](#), [Glen Kopp](#) or [Britt Steckman](#).

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<sup>1</sup> Previously, in October 2016, the U.S. Attorney's Office filed an indictment charging Venditto with conspiracy to commit federal program bribery, honest services fraud, obstruction of justice, and making false statements in connection with the town's loan guarantee scheme.

<sup>2</sup> The SEC first exercised its authority to charge municipal officials under Section 20(a) for control person liability in 2014 in the case of the [City of Allen Park, Michigan](#).