



SEC Announces Enforcement Actions Under its Muni Bond Disclosure Initiative

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By: Lucas F. Torres, John Patrick Clayton

Continuing Disclosure Obligations

Rule 15c2-12 under the Exchange Act requires dealers, when underwriting certain types of municipal securities, to ensure that issuers enter into an agreement to provide information to the Municipal Securities Rulemaking Board (MSRB) on an ongoing basis. Such information includes annual financial information and operating data. Event notices are also required, which are triggered by, among other things, principal and interest payment delinquencies, nonpayment related defaults, changes in applicable bond ratings, bankruptcy and other significant events. In most cases, issuers or obligated persons must submit the required disclosure on or before the date specified in the continuing disclosure agreement or provide notice of failure to do so to the MSRB through the [Electronic Municipal Market Access \(EMMA\)](#) website. For bonds issued after December 2010, disclosure must be submitted to EMMA within 10 business days of the event.

In addition to preventing underwriters from purchasing and selling securities in the absence of a continuing disclosure agreement, Rule 15c2-12 generally requires the offering documents to contain a description of any material failure by the issuer to comply with its continuing disclosure commitments during the previous five years. The SEC may bring an enforcement action against the issuer under Section 17(a) of the Securities Act and/or Section 10(b) of the Exchange Act for any failure to provide such required disclosure. Because, according to the SEC, it is doubtful that an underwriter could form a reasonable basis for relying on the accuracy or completeness of an issuer's ongoing disclosure representations without affirmatively inquiring as to the issuer's filing history, the SEC may also bring an enforcement action against any underwriter of such securities. To defend against these actions,

underwriters must demonstrate that they have exercised adequate due diligence in determining whether issuers have, in fact, complied with such continuing disclosure obligations during prior years. To this end, the SEC has stated that an underwriter may not rely solely on a written certification from an issuer regarding the fulfillment of past filing obligations.

Municipal Market Report and the MCDC Initiative

In 2012, the SEC released its Municipal Market Report, which listed the failure of issuers to comply with their continuing disclosure obligations as a significant problem. On March 10, 2014, the SEC launched the MCDC Initiative to encourage self-reporting by issuers, underwriters and other obligated persons of continuing disclosure violations. For eligible issuers and underwriters that report such violations, the Division of Enforcement recommends that the SEC accept a settlement pursuant to which the issuer or underwriter consents to the institution of a cease-and-desist proceeding under Section 8A of the Securities Act for violations of Section 17(a)(2) of the Securities Act. Additionally, the Division of Enforcement recommends a settlement in which the issuer or underwriter neither admits nor denies the findings of the SEC. The settlement includes certain undertakings by the issuers and underwriters, including establishing policies and procedures to prevent future violations, updating past delinquent filings, cooperating with subsequent SEC investigations and disclosing the settlement in future offering documents. For eligible issuers, the Division of Enforcement will recommend to the SEC a settlement with no civil penalty. For eligible underwriters, recommended civil penalties range from \$20,000 to \$60,000 for each offering containing a materially false statement, depending on whether or not the offering exceeds \$30 million. Caps on the aggregate amount an underwriter is required to pay range from \$100,000 to \$500,000 and depend on the size of the underwriter's revenue.

Considerations for Municipal Issuers and Underwriters

Given the SEC's increased focus on this area, issuers and underwriters should continue to review their policies and procedures relating to continuing disclosure. As part of this review, it is important to review an issuer's prior disclosure for any material violations of reporting obligations. Material violations, according to the SEC, include an issuer's failure to file or timely file annual audited financial information, annual operating information and quarterly reports. Material violations also include an issuer's failure to file notices of late filings as required under the continuing disclosure agreements. It is also important for issuers to develop processes to ensure compliance with disclosure obligations going forward.

Furthermore, the SEC has stated that for issuers and underwriters that would otherwise be eligible for the terms of the MCDC Initiative but do not self-report, there is no assurance that the Division of Enforcement will recommend terms as favorable in any subsequent enforcement recommendation. Additionally, the SEC has cautioned that enforcement actions outside of the MCDC Initiative could result in the SEC seeking remedies beyond those described in the MCDC Initiative, including increased financial penalties of both issuers and underwriters. Therefore, issuers and underwriters that discover material violations of disclosure obligations will likely need to consider whether such violations should be self-reported on the SEC's [MCDC Initiative Questionnaire](#).

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