

CLIENT NEWS BRIEF

Securities and Exchange Commission Extends Deadline for Municipal Issuers to Take Advantage of Municipalities Disclosure Initiative

On July 31, 2014, the Securities and Exchange Commission (SEC), Enforcement Division, announced that it has extended the deadline to its Municipalities Continuing Disclosure Cooperation (MCDC) Initiative, from September 10, 2014, to December 1, 2014. The MCDC Initiative was launched earlier this year by the SEC to allow municipal issuers and underwriters to self-report potential violations of their continuing disclosure obligations. The SEC hopes that the extended deadline will allow greater opportunity for municipal issuers to take advantage of the MCDC Initiative. The deadline is not being extended for underwriters.

According to the Director of the SEC's Enforcement Division, Andrew Ceresney, "(i)t is clear that many underwriters and issuers are working diligently to take advantage of the initiative within its time period. These adjustments to the program are designed to encourage as much participation as possible, which we expect will ultimately benefit investors by encouraging improved compliance with continuing disclosures by the broadest group of industry participants."

Under the MCDC Initiative, announced on March 10, 2014, the Enforcement Division agreed to recommend standardized "favorable" settlement terms for municipal issuers and underwriters. In order to receive the offered terms, issuers or underwriters must self-report inaccurate statements in bond offerings about prior compliance with continuing disclosure obligations under the Securities Exchange Act of 1934, including Rule 15c2-12 (the "Rule"). With some exceptions, under the Rule, bond offerings are subject to periodic reporting consisting of the filing of annual reports and prompt reporting of any payment defaults, rating changes, unscheduled redemptions, draws on insurance, liquidity, or reserves for the bonds, and other "material events" affecting the bonds. Municipal issuers, such as cities, counties, school districts and community colleges, enter into a continuing disclosure agreement compliant with the Rule whereby the issuer agrees to furnish such reports and notices.

Settlement terms with the SEC include entry by the issuer into a cease and desist order, full issuer cooperation with the SEC, institution of remedial actions by the issuer to adopt policies and procedures for future compliance with the Rule, and a requirement to bring all continuing disclosure filings up to date. In exchange, the issuer will not pay any monetary penalties.

Careful consideration should be given by any municipal issuer, in consultation with its legal and financial experts, before entry into a settlement under the MCDC Initiative. As reported in the Wall Street Journal, Lozano Smith negotiated the nation's first settlement under the MCDC Initiative, on behalf of a California school district. [Read the article here](#) or [here](#).

Since announcing the MCDC Initiative, the SEC has learned that some municipal underwriters and issuers have experienced difficulties in identifying potential violations for periods when filings were made in the old Nationally Recognized Municipal Securities Information Repository (NRMSIR) system. The NRMSIRs pre-dated the current, and more user-friendly, Electronic Municipal

August 2014
Number 45



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Market Access (EMMA) system. The SEC's Enforcement Division has stated that it recognizes parties may use reasonably available sources of information to make good faith efforts to identify potential violations but may not be able to identify certain violations during the period of the initiative due to the limitations of the old NRMSIR system. If violations are identified by the Enforcement Division after the expiration of the MCDC initiative, the Enforcement Division has stated that they will consider reasonable, good faith, and documented efforts in deciding whether to recommend enforcement action and, to the extent enforcement action is recommended, in determining relief.

If you have any questions regarding continuing disclosure compliance, the MCDC Initiative, or the potential impact of entry into a settlement agreement with the SEC, please contact one of our [eight offices](#) located statewide. Our firm has assisted many school districts, community colleges, and other public agencies as bond counsel, disclosure counsel, and district counsel. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).