Client Advisory | March 2014

SEC Announces Initiative for Self-Reporting Municipal Continuing Disclosure Non-Compliance

On March 10, 2014, the Securities and Exchange Commission announced a new self-reporting initiative for issuers and underwriters of municipal securities. The so-called Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative") offers potentially favorable settlement terms to issuers and underwriters that self-report "possible violations involving materially inaccurate statements relating to prior compliance with continuing disclosure obligations" under Rule 15c2-12 of the Securities Exchange Act of 1934. According to the SEC, issuers of municipal securities that may have made materially inaccurate statements in a final official statement regarding their prior compliance with continuing disclosure obligations should consider self-reporting. The SEC also recommends that underwriters consider self-reporting if they were involved in the underwriting of an offering in which the final official statement contained such materially inaccurate statements. The SEC has stated that issuers and underwriters that do not self-report can expect increased sanctions for such violations. In addition, individuals who were involved in any of the violations are not assured they will receive any relief from the self-reporting.

In announcing the MCDC Initiative, the SEC has emphasized the importance of compliance with continuing disclosure obligations and the need for an underwriter to satisfy itself regarding an issuer's compliance with such obligations as a condition to underwriting that issuer's municipal securities. We recommend that issuers review their prior continuing disclosure and take steps to remedy any compliance deficiencies. In addition, if any disclosures incorrectly reported compliance with the issuer's continuing disclosure obligations, we recommend that issuers carefully consider, based upon the particular circumstances, the pros and cons of self-reporting under the MCDC Initiative. Similarly, underwriters who were involved in offerings in which the issuer's statement of prior continuing disclosure compliance was inaccurate should consider whether to self-report under the MCDC Initiative.

To take advantage of the MCDC Initiative, issuers and underwriters must self-report any possible violations by submitting a completed questionnaire to the SEC's Enforcement Division by September 10, 2014. A link to the questionnaire as well as to the SEC's announcement with details regarding eligibility for the MCDC Initiative and the settlement terms a self-reporting issuer or underwriter can expect may be found here.

We invite you to contact the Edwards Wildman lawyer responsible for your public finance matters or one of the authors of this advisory if you have any questions regarding the MCDC Initiative.

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