

Client Advisory | August 2014

SEC Modifies Municipalities Continuing Disclosure Cooperation Initiative and Delays Deadline for Issuers and Obligors

On July 31, 2014, the Securities and Exchange Commission (the "SEC") announced modifications to its Enforcement Division's Municipalities Continuing Disclosure Cooperation Initiative ("MCDC Initiative"). The SEC expects that its changes will provide greater opportunity for municipal issuers and obligors and smaller municipal securities underwriter firms to take advantage of the initiative.

Under the MCDC Initiative, announced on March 10, 2014, the SEC agreed to recommend standardized settlement terms for municipal issuers, obligors and underwriters who self-report that they have made materially inaccurate statements in bond offerings about their prior compliance with continuing disclosure obligations under the Securities Exchange Act of 1934. The original reporting deadline for municipal issuers and underwriters under the March 10, 2014 announcement was September 10, 2014.

To allow issuers and obligors more time to complete their reporting requirements, the SEC has extended the deadline for issuers and obligors to self-report potential violations from September 10, 2014 to December 1, 2014. The deadline for underwriters remains unchanged at September 10, 2014. However, with respect to underwriters, the SEC has implemented a "tiered approach" to civil penalties based on the size of the firm to encourage smaller underwriters to participate in the MCDC Initiative.

The tiered approach to the cap on civil penalties for eligible underwriters is as follows:

For underwriters with 2013 reported total annual

revenue of more than \$100 million: \$500,000

For underwriters with 2013 reported total annual revenue between \$20 million and \$100 million: \$250,000

For underwriters with 2013 reported total annual revenue of less than \$20 million: \$100,000

In its July 31 release, the SEC also noted that some municipal underwriters and issuers have experienced difficulties in identifying potential violations for periods when filings were made in the Nationally Recognized Municipal Securities Information Repository ("NRMSIR") system, which pre-dated the current Electronic Municipal Market Access ("EMMA") system. The SEC stated that it recognizes that 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 pre-EMMA NRMSIR system. In this regard, the SEC stated that if violations are identified by the Enforcement Division after the expiration of the MCDC Initiative, the Enforcement Division 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. In this regard, we recommend that issuers and obligors undertake a thorough review of their past compliance and retain a record of the results of that review, even if a decision is made not to self-report.

We also recommend that issuers and obligors consult with counsel regarding any instances of non-compliance as they need to understand the potential consequences of choosing whether or not to self-report.

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

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