

Client Alert

Current Issues Relevant to Our Clients

October 5, 2015

SEC Settles with 22 Underwriting Firms under the Second Round of its MCDC Initiative

On September 30, 2015, in the second round of settlements with underwriters under its Municipalities Continuing Disclosure Cooperation (MCDC) initiative, the Securities and Exchange Commission (SEC) issued cease-and-desist orders to 22 underwriting firms. The orders are in response to voluntary self-reporting of potential misrepresentations in municipal bond offering documents regarding compliance by issuers¹ with prior continuing disclosure obligations. The MCDC initiative offered underwriters and issuers the opportunity to self-report potential violations during the past five years in exchange for more lenient settlements than would otherwise be available for violations which were not self-reported. Our Client Alert on the MCDC initiative can be found [here](#). Our Client Alert on the SEC's first round of settlements with underwriters on June 18, 2015 can be found [here](#).

In the orders, the SEC noted its consideration of the underwriting firms' cooperation in self-reporting the violations. The underwriting firms neither admitted nor denied the alleged violations in the settlements.

As in the first round of settlements, the SEC alleged that between 2010 and 2014, each of the underwriting firms failed to conduct adequate due diligence regarding an issuer's statements or omissions in official statements relating to the issuer's compliance with its prior continuing disclosure obligations under Rule 15c2-12.

Each order included examples of instances in which an issuer failed, in the judgment of the SEC, to comply in all material respects with prior continuing disclosure undertakings and where the official statement did not disclose such failure. In the majority of the examples, the official statement stated that the issuer was in compliance with past continuing disclosure undertakings, when instead the issuer was alleged to have failed to make certain filings or to have made such filings after the applicable deadlines without disseminating a required notice detailing the failure.

Most of the examples cited in the orders were similar to the examples that were referenced in the SEC's first round of settlements with underwriters. Below is a summary of the SEC's findings of disclosure failures that were highlighted in the second round of orders:

- The majority of the failures involved issuers that did not file either annual audited financial statements or required annual financial information, and did not file a "failure to file" notice.
- The next most often-cited failures were of issuers that filed required information late and did not file a "failure to file" notice detailing the delay. These late filings ranged from 27 days to over three years. The issuer with the shortest period of late filing that was cited, without additional instances of late filings for longer periods or complete failure to file, was 33 days.
- The SEC also cited failures relating to incomplete filings or missing information.
- Some orders noted situations in which the official statement did not include any statement regarding compliance with existing continuing disclosure undertakings (when there was a failure to comply).
- The SEC did not cite any instances of a failure to file a reportable event notice.
- Both negotiated and competitive deals were cited.

¹ "issuer" also refers to an "obligated person" under the MCDC initiative.

- In a few cases, the issuer's required annual financial information was provided in an official statement that was available on EMMA, but the SEC maintained that such availability was insufficient because there was no cross-reference on EMMA directing the reader to the available official statement.

Under the settlements, the firms were assessed civil penalties, the amounts of which were based on the number and size of the offerings identified, with caps based on the size of the firm, and were also required to take remedial actions. The underwriters must also cooperate with any subsequent SEC investigations, including any investigation of "the roles of other parties".

Additional underwriting firms are expected to enter into similar cease-and-desist orders in the future. The SEC has not yet provided any timeline or settlement information under the MDCD initiative for issuers and obligated persons.

For More Information

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