

Chapman Client Alert

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Current Issues Relevant to Our Clients

SEC Settles with 14 Underwriting Firms under the Third Round of its MCDC Initiative

On February 2, 2016, in the third 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 14 underwriting firms. The orders are in response to voluntary self-reporting by underwriters of potential misrepresentations in municipal bond offering documents regarding compliance by issuers¹ with prior continuing disclosure obligations. The MCDC initiative, announced by the SEC in March 2014, 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. Under the MCDC initiative, the self-reporting deadline for underwriters was September 10, 2014 and for issuers, December 1, 2014. In its release accompanying these orders, the SEC noted that this is the final installment of settlements with underwriters that self-reported. Our original Client Alert on the MCDC initiative can be found [here](#). Our Client Alerts on the SEC's first and second rounds of settlements with underwriters can be found [here](#) and [here](#).

In this final round of MCDC settlement orders with respect to underwriters, the SEC noted its consideration of the underwriting firms' cooperation in self-reporting the violations. As was the case in the first and second round of settlements, the underwriting firms neither admitted nor denied the alleged violations set forth in respective settlement orders.

Similar to the previous settlements, the SEC alleged in these orders that between 2011 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 or late filing.

Most of the examples cited in the orders were similar to the examples that were referenced in the SEC's first and second round of settlements with underwriters, but evidenced more failures to file in a timely manner than previous orders and also included a failure to report a listed event. Below is a summary

of the SEC's findings of disclosure failures that were highlighted in this third round of orders:

- The majority of the failures in these final settlements involved issuers that filed required information late and did not file a "failure to file" notice detailing the delinquency. These late filings ranged from one month to over fifty-three months. In each of these settlements there were multiple instances of late filings or complete failure to file.
- The next most often-cited 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.
- In one of the settlements, the SEC cited in the related order a failure to file reportable event notices regarding the advance refunding and associated redemptions of certain bonds, and late notices related thereto (without providing further detail), but there were also other multiple failures to file or late filings (ranging from three to twenty-nine months) cited in this particular order.
- As was the case in prior settlement orders, certain 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).

- Both negotiated and competitive deals were cited.

Under the settlements, the firms were assessed civil penalties, up to \$500,000, and the amounts of which were based on the number and size of the offerings identified, with caps based on the size of the firm. The firms were also required to take remedial actions. As was the case in past settlements, the underwriters must also cooperate with any subsequent SEC investigations, including any investigation of “the roles of other parties.”

The SEC has not yet provided any timeline or settlement information under the MCDC initiative for issuers and obligated persons. The SEC, however, did note in its release

of February 2 that the MCDC initiative is continuing with respect to issuers who may have provided investors with inaccurate information about their compliance with continuing disclosure obligations. Also, the SEC noted in the release that the SEC’s 2012 Municipal Market Report identified issuers’ failure to comply with their continuing disclosure obligations as a major challenge for investors seeking important information about their municipal bond holdings.

[For More Information](#)

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1 “issuer” also refers to an “obligated person” under the MCDC Initiative

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