

Overview of SEC's MCDC Initiative

By now you may have seen one or more mailings from bond attorneys regarding the Securities and Exchange Commission's (SEC) Municipalities Continuing Disclosure Cooperation Initiative (the Initiative). This summary is intended to provide a description of key elements of the Initiative and to discuss the practical realities that we encourage you to consider in connection with the Initiative.

First, background on what the SEC is pursuing in the Initiative?

When you previously issued municipal bonds, or acted in the capacity of an obligor in connection with an issue, you likely entered into a continuing disclosure agreement in which you agreed to periodically provide financial and other information to a central repository (currently EMMA) until your bonds matured. You entered into this agreement for the benefit of your bondholders, so that they have continuous access to current information about their investment in the bonds. These agreements were a condition to the underwriter purchasing your bonds under federal rules applicable to them.

The SEC is aware that many municipal debt issuers and obligors may have failed to comply with these agreements by failing to report this information, and may not have disclosed past material violations of their agreements in their Official Statements for subsequent issues, as currently required under federal securities laws. The SEC is also concerned that underwriters did not complete a thorough review of statements by issuers and obligors in Official Statements respecting disclosure about past compliance with these agreements. The SEC has recently entered into settlements against both municipal debt issuers and municipal bond underwriters (including actions against individual staff) involving various types of penalties for violations of this type.

What is the MCDC Initiative?

The Initiative allows issuers, obligors and underwriters to voluntarily self-report failures to disclose material violations of past continuing disclosure agreements in Official Statements and enter into settlement terms with the SEC that are standardized and pre-determined. These standardized settlement terms are expected to be more lenient than terms the SEC will seek if issuers, obligors or underwriters do not enter into the Initiative and unreported violations are discovered later.

Under the terms of the Initiative, underwriters who self-report must agree to pay monetary penalties based on the number and amount of violations, capped at a maximum amount of \$500,000 (depending on the size of the firm) and agree to certain internal process improvements and future certifications and cooperation with the SEC. Issuers who self-report will not be subject to monetary penalties, but will agree to the disclosure of the settlement terms in subsequent bond offerings, the establishment of internal procedures and training and future certification and cooperation with the SEC.

For underwriters, the MCDC Initiative expires after September 9, 2014. For issuers and obligors, the deadline for self-reporting was recently extended until December 1, 2014, after which time the SEC has suggested that it will seek much tougher penalties against underwriters, issuers and obligors who have not self-reported when the SEC can document that securities law violations have occurred, including possibly individual penalties and monetary penalties against issuers.

What will bond underwriters likely be doing under MCDC?

At this point, we believe that many underwriters will settle with the SEC under the Initiative in an attempt to avoid more onerous penalties later for underwritings that were not reported. Underwriters will pay a per violation monetary penalty which is capped at a maximum of \$500,000 depending on the size of the firm, so underwriters have an incentive to report in order to avoid potential allegations of securities law violations in the future. Any reporting made by underwriters under the Initiative respecting an issue will alert the SEC to possible violations by the issuer or obligor.

Piper Jaffray as underwriter will communicate and cooperate with issuers and obligors for transactions that we self-report. Other underwriters may not give an issuer much, if any, notice regarding their intent to self-report a particular issue of bonds. As such, it is possible that an underwriter might report a violation on a transaction where the issuer or the obligor of that debt (a) may not be aware of the potential violation being reported by the underwriter, (b) may not believe that a material violation occurred, or (c) may not be aware that a report to the SEC is being made.

How would an issuer or obligor determine whether they have a reportable issue related to the MCDC Initiative?

Issuers and obligors should start by determining whether they have issued any obligations with Official Statements in the past 5 years prior to the date of the reporting deadline, which is now December 1, 2014. Then, for each identified issue of bonds, issuers and obligors should identify the agreements for any obligations outstanding during the 5 year period before the identified offering and verify if the filings required by the agreements have been made at the times required. Particular attention should be paid to dates on which filings were made, and whether the filing was filed late and how late. Attention should also be paid to material events that may have occurred and whether appropriate and timely notice was given to the marketplace regarding such events. Finally issuers and obligors should review whether any deficiencies were disclosed in Official Statements during the review period and whether any of these disclosure failures were material. If statements made in previous Official Statements were materially inaccurate or omitted material information about compliance with past agreements, issuers and obligors may want to consider entering into the Initiative.

Issuers and obligors are encouraged, if in doubt about their approach to these issues, to seek competent legal advice regarding determining their filing responsibility and history and whether they should enter into the Initiative. Piper Jaffray cannot provide legal advice as to whether you should or should not enter into the Initiative or whether particular underwritings should be reported, as these decisions involve legal judgments that are appropriately discussed with your own attorney.

Issuers and obligors are encouraged to discuss the Initiative with their underwriters and to seek a commitment from them to communicate fully about any self-reporting undertaken by underwriters involving offerings during the 5 year period.

Issuers and obligors are also encouraged to review their policies and procedures regarding continuing disclosure and make needed corrections respecting past outstanding compliance concerns.

For questions about this memo, please call your Piper Jaffray representative.

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