

New SEC Regulations Affects Municipal Public Debt

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Attention:
Mayors, Municipal Clerks, Administrators,
Managers, Finance Directors, Revenue Officers,
Municipal Attorneys

The Securities Exchange Commission (SEC) recently adopted a new regulation affecting municipal public debt. This latest regulation concerning municipal financing transaction continuing disclosure agreements (CDA) requires the continual filing of timely, **annual** financial audits from municipalities with outstanding public finance debts.

Below is a full explanation of the new SEC regulation. Should you have any questions regarding the regulation, compliance with the regulation or process for filing any financial disclosure information and audits, please contact **your** bond counsel or financial advisor for guidance.

Summary of MCDC

Each time a municipal issuer engages in a public securities offering, the issuer must enter a continuing disclosure agreement ("CDA") and thereby agree to make certain information publicly available to investors. By signing a CDA, an issuer undertakes to provide continuing disclosure by filing annual financial information and notices of certain material events on the Electronic Municipal Market Access ("EMMA") platform and/or other relevant information repositories. Moreover, federal securities regulations require that final official statements prepared in connection with municipal securities offerings describe any instance in the previous five years in which the issuer failed to comply, in all material respects, with any disclosure commitments made in any prior CDAs.

On March 10, 2014, the Securities and Exchange Commission Enforcement Division ("SEC") launched the Municipalities Continuing Disclosure Cooperation Initiative ("MCDC Initiative"). This program is designed to address the failure of certain municipal issuers and underwriters of municipal securities to fully comply with federal securities laws. Under the MCDC Initiative, the SEC has invited municipal issuers to voluntarily self-report possible violations related to misrepresentations made in bond offering documents about prior compliance with continuing disclosure obligations under SEC Rule 15c2-12.

The MCDC Initiative specifically addresses material misstatements made in offering documents by an issuer relating to the issuer's prior compliance with its continuing disclosure obligations. For example, a representation in an official statement that a city had made all required continuing disclosure filings for the past five years, when, in reality, such city had not posted any audited financial statements, likely would constitute a "material misstatement" for purposes of the MCDC Initiative. Given the five-year statute of limitations period for SEC enforcement actions, issuers primarily should be concerned with the accuracy of statements made in securities offerings dating back to 2009.

Municipal issuers who elect to participate in the MCDC Initiative will inform the SEC of securities offerings that contain potentially inaccurate misstatements regarding prior continuing disclosure compliance. To the extent that the SEC determines that the self-reported inaccurate statements and omissions were material and violated securities laws, the SEC will recommend relatively favorable settlement terms to the issuers.

The deadline for underwriters of municipal securities to enter the MCDC Initiative was September 9, 2014. The deadline for municipal issuers to enter the program will be **5 p.m. Eastern Time on December 1, 2014.**

Below please find a couple of links to provide you more info on the topic.

<http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml>

<http://www.gfoa.org/sec-enforcement-division-provides-extension-governments-under-mcdc-initiative-0>

Again, if you have any questions with regard to compliance with the MCDC Initiative, please contact your underwriter or bond attorney to insure that you do not have any compliance issues with the Continuing Annual Disclosure requirements for any outstanding bond issues.

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