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SEC Will Tell All MCDC Submitters If They Face Enforcement Action.

CHICAGO – While the Securities and Exchange Commission remains silent on whether there will be more settlements under its continuing disclosure enforcement initiative, an SEC official said any party that voluntarily submitted potential violations will be told whether the commission plans to take action against them.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, made the remark on Thursday during a panel discussion of hot topics in securities law at the National Association of Bond Lawyers' Bond Attorneys' Workshop here.

Gaunt acknowledged that the questions about the future of the commission's Municipalities Continuing Disclosure Cooperation initiative have been popular and "are very understandable," but said she is not in a position to comment.

However, she explained that while there may not be a statement from the commission on MCDC's future, the enforcement division's standard practice is to notify parties "at the earliest opportunity that [it] can do so" if it decides not to recommend an enforcement action.

"I can assure you that anyone who has made a submission will hear from us one way or another," Gaunt said.

Ken Artin, a shareholder with Bryan Miller Olive and past-president of NABL, argued during a similar hot topics panel earlier in the day that the SEC should refrain from pursuing any more settlements.

"The fact is everybody is very much aware of continuing disclosure undertakings" after MCDC, Artin said, adding that "further enforcement actions probably aren't going to drive that point home anymore."

Joseph "Jodie" Smith, a shareholder with Maynard, Cooper & Gale who moderated the two panels, noted that many market participants said the SEC achieved its goal of boosting the market's focus on disclosure as soon as it announced MCDC.

The MCDC initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The most recent SEC action related to the initiative came on Aug. 25 when the SEC publicized 71 settlements with issuers from 45 states.

The settlements included disclosure failures that occurred between 2011 and 2014 and marked the first group of issuers who settled under the initiative. The SEC took action under MCDC against a single issuer, California's Kings Canyon Joint Unified School District, in July 2014.

The issuers that settled included: two states; seven state authorities; 29 localities; seven local authorities; nine school districts or charter schools; six colleges or universities; five health care providers; five utilities; and one retirement community.

Those issuers joined 72 underwriters that represented 96% of the underwriting market by volume and paid a combined $18 million under MCDC settlements. The underwriter settlements were released in three batches, adding to speculation among market participants that there may be more issuer settlements in the future.

During the panel discussion, the audience members, who were primarily bond lawyers, were asked to raise their hands if they had an issuer or conduit borrower client that made an MCDC filing before the initiative's deadline. A large percentage of those in the audience raised their hands in response.

However, when they were asked to do the same if they had a client that was included in the list of 71 issuer settlements, a far smaller number responded affirmatively, showing there are still a large number of issuers that will be waiting for the responses the SEC has promised.

Bond lawyers and others have raised questions about the SEC's prior statement that it intended to pursue actions against non-reporting entities after it finishes settling with those who reported. Gaunt noted she could not comment about the possibility of ongoing enforcement activity but said non-reporters make up an area "in which we are certainly interested."

She also said that while individuals were explicitly not a part of the MCDC initiative, pursuing individuals outside of the initiative "continues to be open to us."

The Bond Buyer

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October 21, 2016

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