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SEC Ends MCDC Settlements, Turns to Violators That Didn't Participate.

WASHINGTON - The Securities and Exchange Commission will not bring any more settlements under its Municipalities Continuing Disclosure Cooperation initiative and will instead focus on those underwriters and issuers that did not voluntarily disclose violations under the MCDC.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, told The Bond Buyer about the unit's shift in focus on Tuesday, ending months of speculation about the future of the MCDC.

"We currently do not expect to recommend enforcement action against any additional parties under the initiative," she said. "We now think it is appropriate to turn our attention to issuers and underwriters and obligors that didn't participate."

The unit's enforcement lawyers view the underwriters and issuers who may have committed violations but did not self-report as part of MCDC as a high risk for future violations, Gaunt said, adding, "That is a group of particular interest to us and we intend to devote significant resources to identifying violations by those parties."

The enforcement lawyers would also like to learn about any instances where some violations were not self-reported even though the issuer or underwriter self-reported others, according to Gaunt.

There have been indications in the past that the commission may also pursue individuals that were associated with the violations that were reported under the initiative.

Market participants had been waiting for an indication from the SEC about MCDC's future since the commission released its round of issuer settlements in late August.

The SEC's decision to conclude the initiative was guided by the knowledge that MCDC both raised the level of awareness of continuing disclosure problems in the market and led to improvements to be put in place for "the key gatekeepers" in the market, according to Gaunt. MCDC also raised the quality of disclosure and due diligence in the market, she added.

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. In total, the initiative led to settlements with 72 issuers from 45 states, including a 2014 settlement with California's Kings Canyon Joint Unified School District. In addition, 72 underwriters representing 96% of the underwriting market by volume paid a total of \$18 million in MCDC settlements.

Issuers that settled under the initiative did not have to pay penalties but agreed to establish appropriate written policies and procedures as well as conduct periodic training regarding their continuing disclosure obligations to ensure compliance with federal securities laws. They also agreed to designate an individual or officer to be responsible for ensuring they are compliant with

their policies and procedures. The designated individual is also responsible for implementing and maintaining a record of the issuer's disclosure training.

The issuers also have to disclose their settlements in future offering documents and cooperate with any subsequent SEC investigations.

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.

Underwriters that settled paid fines based on their size and number of violations, up to a maximum of \$500,000, and agreed to hire an independent consultant. The consultant was tasked with analyzing the underwriters' policies and procedures and submitting a report to the underwriter detailing recommendations for changes or improvements to the policies and procedures. The underwriters, which were announced in a series of three settlements between June 2015 and February 2016, paid a total of \$18 million.

At the time MCDC was announced, some market participants had said continuing disclosure problems were mostly concentrated among small, infrequent issuers. They said most issuers had cleaned up their act after the SEC's Office of Compliance, Inspections, and Examinations issued a risk alert in 2012. The risk alert highlighted due diligence and disclosure failings OCIE had uncovered and urged market participants to establish adequate procedures to help them stay in compliance with federal securities laws related to disclosure.

"Among the things that I think the initiative revealed is that these kinds of failures were committed by issuers of all types and sizes, not just small, infrequent issuers," Gaunt said. "I think the initiative also revealed that this was not a historical problem, but rather, involved misconduct as recent as 2014, when the [MCDC] initiative was announced."

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By Jack Casey

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