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How the SEC Views MCDC's Effects.

PROVIDENCE, R.I. – "Over-disclosure" of apparently minor violations of issuers' continuing disclosure obligations — a legacy of the Municipalities Continuing Disclosure Cooperation Initiative — isn't a problem in the eyes of the Securities and Exchange Commission, two SEC officials said Thursday.

The remarks came from LeeAnn Gaunt, chief of the Enforcement Division's Public Finance Abuse Unit and Rebecca Olsen, director of the Office of Municipal Securities.

The two officials provided updates on their work as part of a panel at the National Association of Municipal Advisors' annual conference here. During the course of that discussion, Gaunt was pressed on whether the legacy of the MCDC has been excessive disclosure.

The MCDC, launched in March 2014 and wrapped up in late 2016, promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the previous five years of issuers falsely saying in official statements that they were in compliance with their continuing disclosure agreements.

The initiative led to SEC settlements with 72 underwriters representing 96% of the underwriting market as well as 72 issuers. It also led to hand-wringing over whether so-called "foot fault" violations, such as filing an annual financial statement a day or two late, needed to be disclosed in an official statement.

Gaunt said that her unit's experience with the MCDC has given SEC attorneys expertise in looking for these kinds of violations. While Gaunt agreed that voluminous disclosure has the potential to decrease the usefulness of disclosure, she was skeptical that it has been a problem so far.

"It's part of our DNA now, to look for it," Gaunt said of that kind of conduct. "I'm not that concerned with over-disclosure."

"Disclosure is your friend," Gaunt told the audience of primarily municipal advisors, who are sometimes involved in helping issuers make decisions about disclosure.

Gaunt said she has not personally encountered instances of disclosures about issuers missing filing deadlines by mere hours. Olsen said that over-disclosure concerns her far less than the state of the market prior to the MCDC.

"MCDC shined a big spotlight on that topic," Olsen said.

Gaunt also provided an overview of recent SEC enforcement actions against municipal advisors, which have made up a large chunk of her unit's cases lately. She said she viewed this as a natural evolution of the relatively new MA regulatory regime, which was mandated by the Dodd-Frank Act and continues to be worked on by the Municipal Securities Rulemaking Board.

Gaunt highlighted the case against an Oklahoma-based MA Municipal Finance Services and two of its principals. The SEC brought charges against the firm late last year alleging that it breached its fiduciary duty to its issuer client when it became concerned, but stayed silent about, the legality of unilaterally amending existing continuing disclosure agreements.

Gaunt was hesitant to say how heavily the circumstances weighed on the decision to bring charges, but said the SEC was informed by the fact that the firm had agreed to assist in disclosure compliance as part of its engagement as MA.

Gaunt warned, however, that MAs can’t simply “scope out” their obligations under the law or under MSRB rules by writing an agreement with the issuer. She added that she has not been aware of this being a problem to date.

MSRB President and chief Executive Officer Lynnette Kelly also addressed the conference, providing an update on MSRB activity. She said the MSRB had “redoubled its efforts” to provide an “environment of no surprises” in its ongoing dialogue with industry stakeholders, a stated priority of the board for its new fiscal year, which began on Oct. 1.

The NAMA conference continues Friday.

By Kyle Glazier

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