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SEC Urges Muni Issuers, Underwriters to Report Violations.

WASHINGTON — The Securities and Exchange Commission on Monday launched an effort to encourage issuers and underwriters of municipal securities to self-report certain violations of the federal securities laws rather than wait for their violations to be detected.

Under the Municipalities Continuing Disclosure Cooperation Initiative, the SEC's Enforcement Division's Municipal Securities and Public Pension unit will recommend favorable settlement terms for muni issuers and underwriters who voluntarily report that there were inaccurate statements in bond documents about their prior compliance with continuing disclosure obligations. Rule 15c2-12 of the Securities Exchange Act of 1934 requires underwriters to reasonably determine that an issuer will comply with its continuing disclosure agreement before underwriting any new municipal securities. The rule also requires new offering documents to include descriptions of any continuing disclosure violations in the past five years.

"The Enforcement Division is committed to using innovative methods to uncover securities law violations and improve transparency in the municipal markets," said Andrew J. Ceresney, director of the Enforcement Division. "We encourage eligible parties to take advantage of the favorable terms we are offering under this initiative. Those who do not self-report and instead decide to take their chances can expect to face increased sanctions for violations."

The SEC has repeatedly indicated it is paying stricter attention to whether issuers are living up to their disclosure agreements and whether underwriters are doing their due diligence in making sure of that. Last year an SEC probe examined underwriters in California, and a July 2013 enforcement action targeted both West Clark Community Schools in Clark County, Ind. and Indianapolis-based City Securities Corp. with falsely claiming in bond documents that the issuer was meeting its secondary market disclosure obligations when it was not.

"Continuing disclosures are a critical source of information for investors in municipal securities, and offering documents should accurately disclose issuers' prior compliance with their disclosure obligations," said LeeAnn Ghazil Gaunt, chief of the Enforcement Division's Municipal Securities and Public Pensions Unit. "This initiative is designed to promote improved compliance by encouraging responsible behavior by market participants who have failed to meet their obligations in the past."

Bond Dealers of America president and chief executive officer Mike Nicholas said the SEC goal is sound but the details of the new program will have to be carefully examined.

"The BDA supports the SEC's goal toward self-reporting of violations to the extent an obvious violation of the securities law has occurred," Nicholas said. "We caution that there may be disproportionate administrative, reporting and other burdens on underwriters via the settlement obligation requirements and we will be examining those in more detail in the coming days."

Ben Watkins, Florida's bond finance director and the chair of the Government Finance Officers Association's debt management committee, said the new program isn't likely to provide much incentive for issuers to step forward.

“I don’t see it,” Watkins said, adding that issuers would probably end up with a cease-and-desist order whether they self-report or get caught by SEC investigators.

John McNally, a lawyer at Hawkins, Delafield & Wood LLP, said the SEC’s announcement underscores a point the commission has already made. McNally said that the investigations currently being done by underwriters of an issuer’s filing history are very comprehensive, and pointed out that the SEC issued a release in June 2010 warning underwriters that they should be diligent about looking into an issuer’s filing history. The West Clark case made issuers sit up and take notice as well, McNally said.

“The SEC has already advised issuers and underwriters of their concerns, and all parties are paying careful attention to such advice,” he said.

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