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Muni Groups Make Fresh Push to Limit MCDC.

WASHINGTON — Municipal bond issuers, dealers, and lawyers are making another push to alter the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation initiative, asking the SEC to narrow the program's scope and delay its deadline by several months.

The Government Finance Officers Association, National Association of Bond Lawyers, Securities Industry and Financial Markets Association, and Bond Dealers of America made their latest effort in a joint letter to all the members of the commission. It asks the SEC to restrict the scope of the controversial self-reporting program to bonds sold since March 2012, and to extend the program's deadline from the end of September 9 to March 10. These represent more ambitious requests; BDA asked last month for an extension only until Dec. 15.

The MCDC allows issuers and underwriters to get favorable settlement terms if they voluntarily report any time in the last five years that they offered bonds without disclosing failures to meet their continuing disclosure agreements they set up under the SEC's Rule 15c2-12. The new joint letter echoes a House floor speech earlier this month in which Rep. Steve Stivers, R-Ohio, hinted at legislative action if the SEC failed to tailor the MCDC more narrowly. All the groups who signed the letter have been pleading their cases to the SEC for months, but the commission has yet to budge.

The MCDC currently requires would-be participants to look back as far as 10 years, because determining if a bond sale five years ago had a misleading official statement could require looking at continuing disclosure for the five years prior to that. EMMA has been the sole central disclosure platform only since 2009, and both issuers and underwriters have said searching the old Nationally Recognized Municipal Securities Information Repositories, or NRMSIRs, is problematic due to the volume of inaccurate information stored there and a number of filings being lost.

"Limiting MCDC to annual filings after 2009, when EMMA came online, will give issuers and underwriters a reliable database to identify instances of potentially material inaccurate statements," the latest letter states. "Further, the SEC did not notify dealers that maintaining records of due diligence activities is a best practice until March 2012. After that date the due diligence practices of the industry changed substantially. The best way to assess how the industry is meeting its disclosure obligations to investors currently is to evaluate compliance since March 2012."

The deadline extension is necessary because the allotted time is not enough to perform time-consuming high-quality reviews, the groups told the SEC.

"Conducting reviews, even reviewing information prepared by underwriters, is resource intensive and the expense was not included in state and local budgets," the letter states. "In addition, some underwriters have turned to outside vendors to conduct reviews, but there are only three such vendors and we understand they are no longer accepting clients because they have reached their capacity."

The letter adds that some issuers would require board approval before participating, another process that could take time.

“Extending the deadline will produce better data on true instances of material noncompliance and provide issuers and underwriters with a meaningful opportunity to evaluate the merits of participating,” the letter argues.

There has been only one MCDC settlement so far. The SEC earlier this month charged Kings Canyon Joint Unified School District in California with misleading bond investors in a 2010 deal.

THE BOND BUYER

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