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SEC Extends MCDC Deadline for Issuers, Tiers Penalty Caps for Underwriters.

WASHINGTON — Securities and Exchange Commission officials have modified their program for issuers and underwriters to voluntarily self-report continuing disclosure failures, saying they want to encourage as much participation in the program as possible.

The modifications to the SEC enforcement division's Municipalities Continuing Disclosure Cooperation (MCDC) initiative were announced late Thursday.

The MCDC allows issuers and underwriters to get favorable settlement terms if they voluntarily report, for any bonds issued in the last five years, any time they failed to make accurate continuing disclosures with regard to those bonds.

The modifications include pushing back the deadline to Dec. 1 from Sept. 10, 2014 for issuers and borrowers, but not for underwriters.

"The deadline for underwriters remains unchanged at Sept. 10," the SEC said. Commission officials have pointed out that the deadline is actually, for practical purposes, the end of Sept. 9.

LeeAnn Gaunt, director of the SEC enforcement division's municipal securities and public pensions unit, called the extension "modest but meaningful." She said the division only extended the deadline for issuers and borrowers because they "are not as well positioned as underwriters to respond within the original amount of time allotted." She said also that the division wanted to give issuers time to consult with their underwriters and then make their own decisions about what actions to take.

In addition, the SEC has put in place a tiered approach to capping the civil penalties for underwriters that recognizes smaller firms should have lower penalties. Originally all underwriters' penalties would be capped at \$500,000 under the MCDC.

But under this modified approach, penalties for underwriters that self-report disclosure failures would be capped at \$500,000 if they report total revenue of more than \$100 million for fiscal 2013 on their annual audited report; \$250,000 if they report fiscal 2013 revenue of between \$20 million and \$100 million; and \$100,000 if they report fiscal 2013 revenues of less than \$20 million.

If the caps are not met, underwriters will have to pay \$20,000 per offering of \$30 million or less with continuing disclosure failures and \$60,000 for offerings of more than \$30 million with such failures.

The SEC also said that if disclosure violations are identified by the enforcement division after the expiration of the initiative, the division "will consider reasonable, good faith and documented efforts in deciding whether to recommend enforcement action and, to the extent enforcement action is recommended, in determining relief."

Some issuers and underwriters have complained that if they issued bonds five years back, they have

to check their disclosures five years back from that — a total of 10 years ago — and bond documents cannot be easily found that far back. Under the SEC's Rule 15c2-12, for an issuer's bonds to be underwritten, it must disclose in bond offering documents any time during the past five years that it failed to file annual financial and operating information on a timely basis.

Bond Dealers of America said it is pleased that the SEC's enforcement division has listened to its concerns, including about the need for a tiered penalty approach. However it said it would have liked the SEC to extend the deadline for underwriters as well as issuers.

"It is very encouraging that the SEC did recognize industry concerns and we hope to continue to keep the working dialogue open between regulators and the industry.

The Securities Industry and Financial Markets Association said it was pleased the SEC extended the deadline for issuers and reduced the ` fines for smaller underwriters, but "disappointed" it did not extend the deadline for underwriters.

"Firms are facing a mammoth task of reviewing nearly 73,000 municipal securities transactions and some need extra time to fully research issuer compliance and discuss potential reports with their issuer and obligor clients."

SIFMA urged the SEC to extend the deadline for underwriters as well.

But Gaunt said it is unlikely the SEC will make further changes to the MCDC initiative.

THE BOND BUYER

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