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Future MCDC Settlements May Be More Detailed.

CHICAGO – Future Municipalities Continuing Disclosure Cooperation initiative settlements may offer more detail on the Securities and Exchange Commission’s priorities and the SEC’s Office of Municipal Securities may offer more municipal advisor rule guidance, commission officials said Thursday.

The information came from two SEC lawyers speaking on separate panels at the National Association of Bond Lawyers’ Bond Attorneys’ Workshop, which concluded Friday.

The SEC’s MCDC program, which offers reduced settlement terms to issuers and underwriters who voluntarily report instances over the past five years in which their official statements falsely claimed compliance with continuing disclosure obligations, was the hottest topic of the conference. Lawyers repeatedly tried to get the lone SEC enforcement official present to reveal more detail on the SEC enforcement division’s thinking.

During a discussion panel devoted to MCDC, Kevin Guerrero, a senior counsel in the enforcement division’s municipal securities and public pensions unit, revealed some additional detail on what market participants can expect from MCDC settlements. Although he was unprepared to make promises to the attorneys present, Guerrero said the commission is mindful of the criticism that was doled out by the legal community after the SEC released an MCDC settlement with Kings Canyon Joint Unified School District in July that was vague. That settlement order referenced various failures to file continuing disclosures by the district, but did little to offer the market more clues about what sorts of continuing disclosure lapses the SEC is most interested in.

Guerrero told the bond lawyers that he hopes future orders will be more detailed. He also said it is likely that settlements with broker-dealers, whose deadline to self-report passed at midnight Sept. 9, would include all deals they reported to the SEC as opposed to separate orders for each different issuer for which they underwrote bonds. The SEC probably will not wait until the issuer reporting deadline of Dec. 1 to start releasing those dealer settlements, he added.

“I expect we will try to churn these out as we get the settlements completed,” Guerrero said.

Rebecca Olsen, chief counsel in the SEC’s muni office, told bond lawyers that the commission staff could issue further municipal advisor rule guidance. Although the muni office has no “concrete plans” to release another batch of information about the massive rule approved last fall, it is mulling the possibility, she said.

“It’s possible we may consider a few additional topics on the investment side, including possibly something on local government investment pools,” Olsen said.

There is still apprehension among dealers about dealing with investments under the MA rule, which implemented the Dodd-Frank Act’s requirement that individuals and firms giving advice to municipalities be subject to a fiduciary duty to place the clients’ interests over their own.

All bond proceeds and muni escrows are subject to the rule, and Utah State Treasurer Richard Ellis noted during a different panel discussion that municipalities must keep track of where they put bond money because even a small amount of bond proceeds could “taint” a much larger pool of tax revenue dollars so that the advisers would be considered municipal advisers subject to federal oversight.

The SEC has already offered some guidance on the subject, saying that dealers could rely on a good faith effort to determine that a fund did not contain bond proceeds, if there was evidence to support that conclusion. Dealers could make use of exemptions from the MA rule to protect themselves from having to register, including by running that business through a registered investment advisory arm of the business, but firms have said that would increase costs for issuers.

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