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## The MCDC Initiative: December Was Just The Beginning - Butler Snow

As many of our issuer clients know, as a result of perceived wide-spread violations of post issuance reporting compliance, in 2014 the SEC conducted its “Municipal Continuing Disclosure Compliance Initiative” or the “MCDC Initiative.” Under the MCDC Initiative, each investment bank was required to look back five years to all of the issues it underwrote and self-report to the SEC any material misstatements made in an offering document (the “Official Statement”) regarding an issuer’s compliance with prior continuing disclosure undertakings made pursuant to SEC Rule 15c2-12. Investment banks were required to report their transgressions to the SEC by September 9, 2014. Similarly, any issuer who had publicly offered bonds in the municipal market in the last five years were “encouraged” to review its Official Statements for any material misstatements relating to the issuer’s compliance with its continuing disclosure obligations and to self-report any findings to the SEC. Issuers had until December 1, 2014 to self-report.

So now what? Now we wait for the SEC to sort through all of the information received from the investment bankers and issuers. It is unclear when the SEC will begin to enter into cease and desist proceedings with investment banks or issuers. The SEC has stated that it will address investment bank filings first and, with respect to issuers, will address the most egregious transgressions first. But how it will make those determinations and what it deems to be a “material misstatement” with respect to continuing disclosure compliance is still unclear.

Many issuers chose to self-report to the SEC under the MCDC Initiative. If an issuer did self-report, the only thing to do right now is to wait to hear from the SEC. ONE NOTE OF CAUTION: when (and if) an issuer hears from the SEC, whether it is a simple request for additional information or something more formal, we would recommend that you contact your bond counsel in connection with any responses to be made to the SEC. You may tell the SEC that you prefer to get advice from your counsel before responding to questions or providing additional information. Get the name and contact information from the SEC caller. SEC rules and procedures are complex and it would be to your advantage to be fully informed when you respond to any requests from the SEC.

Whether your entity participated in the MCDC Initiative or not, the SEC is very focused on continuing disclosure compliance. In order to ensure that your entity is in compliance, you should consider the following:

1. **Determine whether your entity is currently in compliance with your continuing disclosure obligations.** At the time of issuance of publicly offered securities, each issuer is required to enter into an agreement to provide ongoing disclosure. An issuer should review the information that it agreed to provide in all of its prior continuing disclosure undertakings and determine whether it has been providing the required information on a timely basis. If not, the issuer may want to consider doing a “catch up” filing.
2. **Consider whether to adopt policies and procedures relating to continuing disclosure compliance.** The SEC is serious about post issuance reporting compliance. While an issuer may not have been required to self-report under the MCDC Initiative, it is still important for the issuer

to make sure it will comply in the future. Butler Snow has prepared suggested “form” policies and procedures an issuer can adapt to its needs and then adopt to assist with ongoing compliance. We would be happy to assist you with this process.

3. **Follow up.** Once the issuer is current in its filings and has adopted policies and procedures, it is crucial to make sure that the ongoing continuing disclosure obligations are met and that the issuer complies with any policies or procedures it has adopted. Remember that so long as the issuer has publicly offered securities that are outstanding, the issuer has obligations to continue to update the market.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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