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22 MCDC Settlements With Firms to be Followed by Another Round.

WASHINGTON – The Securities and Exchange Commission's settlements ordering 22 municipal securities underwriting firms to pay $4.12 million for disclosure violations, is likely to be followed by a third round of settlements with firms under the SEC's Municipalities Continuing Disclosure Cooperation initiative, lawyers said on Wednesday.

"My understanding is that there will be another round of underwriter settlements," said National Bond Lawyers Association president Kenneth Artin, a shareholder at Bryant Miller Olive.

"I do believe that it is very likely that we will in fact see a third round of orders against underwriters," said Elaine Greenberg, a partner with Orrick, Herrington and Sutcliffe and former chief of the SEC enforcement division's municipal securities and public pensions unit.

After the underwriter settlements are completed, the SEC will release settlements with muni issuers.

In this round, PNC Capital Markets, LLC, which declined to comment on its settlement, paid the maximum penalty of $500,000 and Fifth Third Securities Inc. paid the lowest penalty of $20,000.

Each of 22 underwriting firms agreed to hire an independent consultant to review its policies and procedures on due diligence for municipal securities underwriting.

The MCDC initiative allows underwriters and issuers to receive lenient settlement terms from the SEC if they voluntarily self-reported any instances during the past five years in which the issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements and the underwriters were negligent in failing to discover the misstatements. Underwriters had to voluntarily report the violations by Sept. 10, 2014 and issuers by Dec. 1, 2014

The civil penalties for each firm are assessed according to the number and size of the issuers' fraudulent offerings, up to a cap based on the firm's size. The maximum possible penalty under the MCDC initiative is $500,000.

In this round, only PNC reached the $500,000 ceiling. This is a departure from the first round of underwriter settlements on June 18, in which 10 of 36 underwriters that paid a total of $9.3 million hit the maximum penalty.

In this round, the SEC found that between 2010 and 2014 the 22 firms sold munis using offering documents that contained materially false statements or omissions about the issuers' continuing disclosure compliance and were negligent in failing to conduct adequate due diligence to identify the misstatements and omissions before offering and selling the bonds. Those failures violated Rule 15c2-12 of the Securities and Exchange Act of 1934 on disclosure and showed a willful violation of Section 17(a)(2) of the Securities Act of 1933, according to the commission.

The 22 firms neither admitted nor denied the findings but agreed to cease and desist from such violations in the future.

“The MCDC Initiative has revealed that in recent years, a large number of municipal bond underwriters failed to conduct adequate due diligence before selling municipal bonds to their customers,” said Andrew Ceresney, director of the SEC’s enforcement division. “In addition to effectively addressing this past misconduct, we believe the initiative has been effective in improving underwriter due diligence in municipal securities offerings on a going forward basis.”

The settlements provide more clues as to what it considers material failures to disclose compliance with continuing disclosure agreements.

In its order against Commerce Bank Capital Markets Group, the SEC the firm underwrote bonds in 2013 for an issuer that was timely in filing its annual financial report in its official statement but failed to cross-reference to its official statement on EMMA. The situation was similar to one in the first round of settlements involving Loop Capital Markets, but in that case the issuer failed to file its annual financial disclosure documents on time, as well as failed to cross-reference to its official statement on EMMA. This round shows the SEC’s belief that cross-referencing to an official statements on EMMA is materially significant.

The majority of other specific examples the SEC provided in the 22 orders involved instances where issuers and obligors were either late in providing annual financial reports or annual operating data, or failed to disclose them at all. Crews & Associates, which was ordered to pay $250,000, underwrote bonds in 2013 for an issuer that had made no statements on prior disclosure compliance and no filings of financial disclosures on EMMA since 2009. The SEC found that other firms underwrote for issuers that ran the gamut for lateness. The SEC found that Estrada Hinojosa & Co. offered and sold bonds for an issuer that was 33 days late filing its annual financial report, while Joe Jolly & Co. sold bonds for an issuer that waited four years to file an annual financial report after it was due.

The SEC granted waivers to each of the firms to prevent them from being disqualified from certain exemptions and safe harbors in SEC rules. Without those waivers, the firms charged in the settlements would probably be unable to do certain types of non-muni transactions.

The SEC’s orders and penalty amounts for the second round of 22 underwriters are:

- Ameritas Investment Corp. – $200,000
- BB&T Securities, LLC – $200,000
- Comerica Securities, Inc. – $60,000
- Commerce Bank Capital Markets Group – $40,000
- Country Club Bank – $140,000
- Crews & Associates, Inc. – $250,000
- Duncan-Williams, Inc. – $250,000
- Edward D. Jones & Co., L.P. – $100,000
- Estrada Hinojosa & Company, Inc. – $40,000
- Fifth Third Securities, Inc. – $20,000
- The Frazer Lanier Company, Incorporated – $100,000
- J.J.B. Hilliard, W.L. Lyons, LLC – $420,000
- Joe Jolly & Co., Inc. – $100,000
- Mesirow Financial, Inc. – $100,000
- Northland Securities, Inc. – $220,000
- NW Capital Markets Inc. – $100,000
- PNC Capital Markets LLC – $500,000

- Prager & Co., LLC – $100,000
- Ross, Sinclaire & Associates, LLC – $220,000
- UBS Financial Services, Inc. – $480,000
- UMB Bank, N.A. Investment Banking Division – $420,000
- U.S. Bank Municipal Securities Group, a Division of U.S. Bank National Association – $60,000

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