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Update on the SEC's MCDC Initiative: Ice Miller

Many of you have asked for an update on the SEC's 2014 Municipalities Continuing Disclosure Cooperation Initiative (MCDC). The MCDC is a self-reporting initiative for underwriters and state and local governmental bond issuers, such as school corporations, targeting misstatements in Official Statements regarding prior compliance with Continuing Disclosure Undertaking Agreements under SEC Rule 15c2-12.

Orders Regarding Underwriters

On September 30, 2015, the SEC announced a second round of settlements with underwriters of municipal bonds under the SEC's MCDC Initiative. In this round of settlements, the SEC announced cease and desist orders for 22 municipal bond underwriting firms, finding violations of federal securities laws resulting from material misstatements and omissions in Official Statements and failures by underwriters to conduct adequate due diligence regarding past continuing disclosure compliance. The SEC's press release announcing the enforcement actions is available [here](#).

The first round of MCDC settlements, involving 36 municipal underwriters, was announced in June, 2015. The SEC's press release announcing these enforcement actions is available [here](#). Another round of settlements with underwriters is expected, perhaps later in 2015.

The underwriting firms neither admitted nor denied the findings but agreed to cease and desist from further violations. Settlements included payment of civil penalties to the SEC, and the promise to retain independent consultants to review policies and procedures on due diligence. It is important to note that these fines and the resulting settlement orders were exactly what was communicated in the original announcement of the MCDC.

Anticipated Orders Regarding Issuers

It is expected that further SEC announcements concerning settlements with self-reporting bond issuers will follow after the last wave of Underwriter orders. Originally, the SEC believed that all orders relating to MCDC would be complete by the end of 2015. However, it now appears more likely that they will continue into 2016. SEC representatives have also indicated that every issuer who self-reported will, at some point, receive correspondence from the SEC even if it is just to notify the issuer that the SEC has decided to take no action.

Representatives from the SEC have indicated that just because an underwriter has entered into a settlement order for a misstatement regarding a particular bond issue, it does not necessarily mean that the SEC will be asking for a settlement from that issuer. It is believed that many issuers self-reported under the MCDC in an abundance of caution not necessarily because they believe misstatements were material. **If a school corporation is contacted by the SEC, remember it is important to consult with school counsel or bond counsel before responding.**

Of the over 200 bond lawyers who were surveyed by the National Association of Bond Lawyers, 73% responded that all, most or some of their issuer and borrower clients self-reported under the MCDC.

Some of the most surprising responses were related to questions regarding materiality. Roughly 93% of the lawyers that responded said their clients self-reported some or many misrepresentations about compliance with continuing disclosure obligations that were unlikely to be considered material. According to case law, information is material if an investor would want to know it before buying or selling securities.

The settlements cover Official Statements for Bonds issued between 2010 and 2014. The SEC's stated goals with MCDC include the improvement in quality and timeliness of continuing disclosure filings on EMMA (which stands for Electronic Municipal Market Access; [click here](#) for link) and improvement in underwriter review of disclosures in Official Statements regarding prior compliance.

When a School Corporation issues bonds, it is important to carefully review the Official Statement to make sure that it is accurate and does not omit any information which would be material to an investor. Even though the School Corporation may hire another party, such as a financial advisor, to assemble this information, the School Corporation is legally responsible for the content of the Official Statement. In addition, an issuer of municipal bonds should consider adopting post issuance procedures, and once adopted, the issuer must make sure that the procedures are followed.

Please feel free to contact [Jane Neuhauser Herndon](#), [Kristin McNulty McClellan](#), [Erik Long](#) or any member of the [Municipal Finance Group](#) with any questions or concerns or for more information about MCDC, EMMA or Post Issuance Procedures.

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October 12, 2015

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