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MCDC Credited with Boosting Muni Disclosure.

AUSTIN – Municipal market participants said continuing disclosure is improving and credited the Securities and Exchange Commission's voluntary enforcement initiative with giving it a boost.

They also had positive things to say about federal oversight and rules for municipal advisors.

They made their remarks here Tuesday at The Bond Buyer's 20th annual Texas Public Finance Conference, as the SEC announced its final group of underwriter settlements under the Municipalities Continuing Disclosure Cooperation initiative.

The MCDC initiative offered favorable settlement terms to municipal bond underwriters and issuers that self-reported violations. In three waves, the SEC hit 72 underwriters with a total of $18 million in fines for failing to conduct adequate due diligence to identify issuer misstatements and omissions before offering and selling their bonds to their customers.

It will soon begin announcing settlements with issuers for selling munis using offering documents that contained materially false statements or omissions about their compliance with their continuing disclosure obligations.

During the panel, David Medanich, the vice chairman of FirstSouthwest, now Hilltop Securities, who is a municipal advisor, said his firm created a disclosure department years ago when the SEC's continuing disclosure rules took effect and took those rules very seriously.

But he credited the MCDC with making market participants more diligent about being timely in meeting their deadlines for disclosing financial and operating information. It also triggered firm and issuer reviews of the whole continuing disclosure process.

"Overall, this has been a real eye opening experience for me … for the firm and for clients. It's definitely focused everybody on continuing disclosure," he said.

Both he and Kim Edwards, a senior vice president at Piper Jaffray & Co. who was also on the panel, said muni issuers want to do the right thing.

Paul Maco, a partner at Bracewell in Washington, D.C. who moderated the panel, asked if underwriters in Texas have ever walked away from a deal because of the issuer's failure to meet its continuing disclosure obligations.

Edwards said underwriters try to work with issuers to improve their continuing disclosure compliance, rather than walk away from deals. If an issuer has chronic continuing disclosure problems, the firm asks it to provide a statement or some form of certification that it has improved its policies and procedures so the disclosure failures stop, she said.

Georgia Sanchez, assistant city treasurer of Austin who also was on the panel, said that as a result of MCDC, her city reviewed the entire issuance and disclosure process and that this "really helped us."

“It really helped us step up our game and be more transparent,” she said.

Shamoil Shipchandler, director of the SEC’s Ft. Worth Regional Office and a panelist, said the fact that MCDC has made underwriters and issuers go back and look at their continuing disclosure policies and procedures is a “collateral benefit that is helpful … sort of across the board.”

A lot of the larger issuers have adopted policies and procedures on continuing disclosure, but some of the smaller, infrequent issuers have not, Edwards said.

Medanich gave the Government Officers Association and other such organizations kudos for making it clear that disclosure policies and procedures are important to have.

Edwards added that it’s good when an issuer has them in place so the underwriter doesn’t have to “reinvent the wheel” on continuing disclosure with every transaction.

Maco pointed out that if issuers have policies and procedures in place, it’s hard for the SEC to charge them with negligence for violations. “It’s a bit of an insurance policy,” he said.

He asked Shipchandler if his SEC office will follow up to make sure underwriters that settled under the MCDC initiative are not violating their orders to cease and desist from violations.

Shipchandler said the office won’t go searching for violations of C&D orders, that usually the SEC is made aware of them through a competitor or anecdotal information.

Edwards said she’s noticed more issuers disclosing more information on their websites. “In general, I think there is more information now,” she said.

But when Maco asked if issuers are starting to disclose information beyond what is required for material event notices, such as when an employer leaves and hurts the local economy, Medanich said not really.

If an issuer discloses one large company leaving the area, must every company that leaves from there on out? Medanich asked.

“I’m hesitant,” he said. “It’s not that I don’t want to, but I’m hesitant to supply something additional when I’m not sure of the outcome because where do I stop.”

“Just simply filing something to be over-protective is not necessarily a good thing,” he said.

Edwards said there’s a trend of credit rating agencies trying to be more proactive, probably as a result of their mistakes during the financial crisis.

They “have started to offer … opinions” on various topics, she said.

It was challenging for some Texas issuers trying to sell bonds recently, when a rating agency issued a report warning about the credit impacts of falling oil prices. “It’s going to make [issuers’ lives] more challenging,” she said.

Maco asked the panelists how the municipal advisor rules have affected them and whether they are concerned about underwriters giving issuers advice that causes the firms to become MAs.

Medanich he’s always felt he has had a fiduciary duty to put his issuer clients’ interest first, before his firm’s. He said he also thinks underwriters recognize their obligations to deal fairly with market participants.

The MA rules, he said, “clearly define the roles” of the MA and underwriter and makes clear a firm is either one or the other.

“I think it’s a great thing,” he said. “I think it’s made things a little bit clearer and a little bit easier.”

Edwards agreed, but noted, “internally. We’ve had more procedures and policies to clarify.”

“It hasn’t really impacted us at all,” she said. Most issuers have hired an independent registered municipal advisor, she said. The MA rules allow an underwriter firm to avoid having to register as an MA as long as the issuer retains, as its own MA, an advisor that doesn’t have ties to an underwriting firm, and says that it will rely on that MA’s advice.

For issuers that haven’t hired an IRMA, “we are a little bit more cautious,” Edwards said.

Asked about the SEC exam process, Shipchandler said his office will “likely not” be involved in routine examinations of MAs but will certainly look into any complaints or suspected violations.

THE BOND BUYER

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FEB 3, 2016 3:44pm ET