

# Bond Case Briefs

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## GFOA Alert: The SEC MCDC Initiative and Issuer Settlements.

Following three rounds of settlements with underwriters and broker dealers under the Securities and Exchange Commission's (SEC) 2014 [Municipalities Continuing Disclosure Cooperation \(MCDC\) Initiative](#), the SEC's Enforcement Division has begun reaching out to government debt issuers who participated in the program. As issuers receive calls and settlement proposals from the SEC in the coming weeks, the GFOA wants to alert members who participated in the initiative that they may have very little time to agree to settlement terms once those terms are offered by the SEC's Enforcement Division.

In the three rounds of SEC settlements with underwriters that were announced in 2015 and 2016, **underwriters were given as little as one week to agree to the settlement findings.** *The SEC's Office of Municipal Securities has assured GFOA that issuers will be given greater flexibility in approving proposed settlements and that additional time will be provided, if requested. However, the GFOA is urging members who participated in the initiative, as well as members who many not have participated but were reported by their underwriter, to:*

- Be prepared for tight settlement turnaround times. Issuers who need more time to review the proposed settlement should request additional time from the SEC Enforcement Division staff who is managing the settlement process.
- Consult with your legal counsel and have them review the proposed settlement and settlement findings and provide advice on how best to respond to the SEC's Enforcement Division. Obtain advice regarding appropriate disclosures regarding the disposition of the settlement.
- Initiate conversations with elected officials and any other governing board members to brief them on the situation and be aware of timeframes for internal approval processes to prepare decision-makers for the settlement process.

### **Background on the MCDC Initiative**

In 2014 the SEC's Enforcement Division announced the MCDC Initiative to provide issuers and underwriters the opportunity to self-report instances of material misstatements in bond offering documents regarding the issuer's prior compliance with its continuing disclosure obligations. As issuers interested in participating prepared to file by the December 1, 2014 deadline, the GFOA urged members to exercise caution and familiarize themselves with the details of the initiative before consenting to engage in this program.

For example, though the terms of the initiative preclude SEC from imposing monetary fines on participating issuers, the SEC reserves the right to pursue separate enforcements against individuals within a government who it deems to be culpable of the misstatements. Additional terms agreed to by issuers participating in the initiative include the commitment to:

- Establish appropriate policies and procedures and training regarding continuing disclosure obligations within 180 days of the institution of the proceedings;

- Comply with existing continuing disclosure undertakings, including updating past delinquent filings within 180 days of the institution of the proceedings;
- Disclose in a clear and conspicuous fashion the settlement terms in any final official statement for an offering by the issuer within five years of the date of institution of the proceedings; and
- Provide the Commission staff with a compliance certification regarding the applicable undertakings by the issuer on the one year anniversary of the date of institution of the proceedings.

In the three rounds of settlements with underwriters and broker dealers 72 firms paid just over \$18 million for failing to identify misstatements and omissions before offering and selling bonds as required by SEC Rule 15c2-12. Violations identified in the settlements included failure to file material event notices and late filings (some as little as 14 days). The SEC Enforcement Division has not offered information on how many issuer settlements it is pursuing, how many rounds of issuer settlements will occur, the terms of any proposed settlements, and over what period of time these settlements will be announced.

Wednesday, February 10, 2016