

# **Bond Case Briefs**

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## **MCDC Has Improved Disclosure But Issues Remain.**

NEW ORLEANS – Municipal securities disclosure has improved in the two years since the announcement of the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation initiative, but there are still questions and concerns as it continues to evolve, market participants said here.

They made their remarks during a panel on disclosure after MCDC at The Bond Buyer and Bond Dealers of America 2016 National Municipal Bond Summit.

The MCDC initiative promised underwriters and issuers lenient settlements if they self-reported instances where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

To date, the initiative has resulted in settlements with 72 underwriters, which represent 96% of the municipal underwriting market by dollar volume. Underwriters who settled received a fine of up to \$500,000 and were required to take steps to improve disclosure, including retaining an independent compliance consultant.

The SEC is currently negotiating settlements with issuers, after which the commission is expected to pursue actions against underwriters and issuers with violations who chose not self-report them under MCDC.

Lisa Washburn, chair of the National Federation of Municipal Analysts, cited statistics from a not-yet-released NFMA survey on disclosure that polled more than 200 members, saying there is agreement among analysts that disclosure has improved dramatically as those settlements have unfolded. But only 25% of respondents said they were satisfied with current disclosure.

Most of the lingering concern had to do with timeliness, she said, exhibited by annual financial statements that may only become available 270 days after the end of the fiscal year. Fewer than 20% of those polled said they were satisfied with that aspect of disclosure, according to Washburn, a managing director at Municipal Market Analytics.

Aside from market participants' increased awareness of their disclosure obligations after MCDC, Washburn said a large amount of the improvement is attributable to the Municipal Securities Rulemaking Board's EMMA making available disclosure information in one place.

However, she added many respondents still believe EMMA can be improved to ensure issuers are filing data in the right place, a hurdle each of the panelists mentioned as an ongoing problem. There also is room to modernize EMMA's technology to make it more usable, efficient, and able to be leveraged, Washburn said.

These and other issues have been discussion points during several collaborative gatherings of municipal market groups, including NFMA, to respond to the need for more improvements in disclosure.

Rebecca Lawrence, public finance legal counsel for Piper Jaffray & Co., said one of the things that astonishes her the most about current disclosure is the varied responses she has seen around the country as MCDC has unfolded.

“For me the disparity and inconsistency in the marketplace is one of the biggest frustrations,” she said. Some issuers already have thorough policies and procedures in place and are in compliance while others, usually those that are smaller, still do not have a good understanding of their responsibilities and the SEC’s Rule 15c2-12 on disclosure, Lawrence added.

Washburn said she has seen other problems with issuers, with some feeling they should be compensated for good disclosure in their offerings or treating 15c2-12 “as a ceiling instead of a floor.”

“Good disclosure is a gateway issue for issuing in any public market,” Washburn said. “It may not be direct in [the] initial sale, but when you’re looking at the functioning of the municipal market, good disclosure will facilitate good market function.”

In addition to these concerns, other panelists brought up much-discussed ideas related to MCDC, such as the SEC giving issuers and market participants a better sense of what they consider to be material and necessary for disclosure.

Jacob Lesser, director of Promontory Financial Group who has served as an independent compliance consultant for firms submitting under MCDC, said that from the small sample size he has seen, “the industry has made great improvements in what they are doing through due diligence under 15c2-12.” But determining whether something is material to an investor can still be difficult given the unique aspects of the muni market, he added. Lesser agreed with other panelists when they said it seemed the SEC provided good examples in the underwriter settlements for firms to follow in the future.

## **The Bond Buyer**

By Jack Casey

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