

The Division of Enforcement of the Securities and Exchange Commission (SEC) announced on March 10, 2014 a voluntary self-reporting program for issuers and underwriters for a limited time and covering a limited topic. Numerous organizations, including the Government Finance Officers and the National Association of Bond Lawyers, as well as several individual law firms, have reported on the significance of this initiative.

This past summer, the Division of Local Government Services (Division) [issued a notice](#) alerting New Jersey municipalities to this program. Essentially, the SEC program, called the “MCDC Initiative,” permits issuers, obligated persons and underwriters, for a limited time only, to self-report misstatements concerning prior compliance with continuing disclosure obligations in an official statement for a municipal bond issue. In exchange, the SEC Division of Enforcement agrees to recommend “favorable” settlement terms for issuers and obligated persons, as well as for underwriters involved in the offering of those municipal securities. **To participate in the MCDC Initiative and be eligible for the standard settlement terms, municipalities must self-report potential violations by December 1, 2014.**

The Division’s notice warned municipalities and their officials of the repercussions that may result from failing to comply with continuing disclosure obligations, and urged municipalities to consult professionals, such as their financial advisors or finance lawyers (here, Advisor) to enhance compliance with continuing disclosure obligations. The Advisor should also be consulted regarding participation in the MCDC Initiative.

How can an Advisor assist a municipality to determine whether participation in the MCDC Initiative is advisable? An Advisor can assist the municipality in completing a continuing disclosure survey which could (i) provide details of the municipality’s publicly offered bond issues since December 1, 2009; (ii) include results of a diligence review of historical filing sites for annual information, audited financial statements and material event notices (the nationally recognized municipal securities information repositories (NRMSIRs) for filings due prior to July 1, 2010 and the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (EMMA) Internet-

based portal for filings due on or after July 1, 2010); (iii) compare what was stated in prior official statements about past compliance with continuing disclosure to documented filing history; and (iv) indicate any additional facts regarding public availability of information that might be relevant to a municipality’s individual facts and circumstances. After completion of a continuing disclosure survey, the Advisor can then assist the municipality in considering the benefits (and detriments) of participating in the MCDC Initiative.

The reporting deadline for underwriters has already passed. Although it is expected that an underwriter would have alerted a municipality before submitting such municipality’s transaction to the SEC under this initiative, notification was not required. If you were notified that one or more of your publicly offered bond transactions were reported to the SEC by an underwriter under the MCDC Initiative, you should strongly consider completing a survey of your past compliance statements in order to assess whether self-reporting under the MCDC Initiative would be in the best interest of your municipality.

Aside from participation in the MCDC Initiative, there are certain steps all municipalities can take now to better protect themselves against future disclosure lapses. In a series of settlement orders over the past few years and again in the MCDC Initiative’s recommended settlement terms, the SEC refers to the implementation of appropriate policies and procedures and compliance training for public officials and staff. Municipal issuers and obligated persons would be well-served to take a fresh look at their current compliance by discussing with their financial and/or administrative staff (and legal advisors) and an Advisor at least the following questions:

1. What is your procedure for developing new disclosure documents either for new bond issues or for annual reports and providing “event” notices, and are these reflected in written policies and procedures?
2. What is your procedure for review of information contained in your comprehensive annual financial report?
3. Do the employees responsible for the preparation and/or review of disclosure materials have sufficient training?

Voluntarily implementing or enhancing formal written disclosure policies and procedures is good practice and, when done in advance of an SEC investigation, has been looked upon favorably by the SEC. If this is done on a widespread basis, it will improve the overall quality of disclosure in the municipal market and, perhaps, allay the SEC's call for legislative authority to require municipal issuers to adopt SEC mandated policies and procedures.

If you have questions about the MCDC Initiative or your prior compliance with continuing disclosure undertakings, or would like assistance in developing or implementing enhanced disclosure policies and procedures, please contact one of the Squire Patton Boggs public finance lawyers listed in this advisory.

Contacts

Mark D. Sheridan

Partner, Newark
Admitted in New Jersey
T +1 973 848 5681
E mark.sheridan@squirepb.com

Lauren M. Trialonas

Senior Associate, New York
Admitted in New Jersey
T +1 212 872 9862
E lauren.trialonas@squirepb.com

Abby Pugliese

Associate, New York
Admitted in New Jersey
T +1 212 872 9845
E abigail.pugliese@squirepb.com

Kenneth W. Bond

Partner, New York
T +1 212 872 9817
E kenneth.bond@squirepb.com

Jeffrey M. Pohl

Of Counsel, New York
T +1 212 872 9836
E jeffrey.pohl@squirepb.com

Alexandra M. MacLennan

Partner, Tampa
Disclosure Group Lead
T +1 813 202 1353
E sandy.maclennan@squirepb.com

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