

SEC Announces 71 Issuer MCDC Settlements

August 29, 2016

On August 24, 2016, the SEC announced that it had entered into settlement orders with 71 municipal issuers and other obligated persons for violations of federal securities laws in municipal bond offerings.¹ The issuers and obligated persons² settled without admitting or denying the findings and agreed to cease and desist from future violations. The SEC's enforcement actions were brought under the Municipalities Continuing Disclosure Cooperation ("MCDC") Initiative.

Settlements

The SEC issued orders instituting cease-and-desist proceedings, making findings, and imposing remedial sanctions on 71 issuers and obligated persons across 45 states, including two states (Minnesota and Hawaii), numerous cities, and a number of state authorities, municipalities, school districts, and healthcare providers. The SEC found that each of these issuers sold municipal bonds using offering documents that contained materially false or misleading statements or omissions about their compliance with continuing disclosure obligations associated with previous offerings. The SEC settlements related to both negotiated and competitive bond offerings. Each issuer settled without admitting or denying the findings and agreed to, within 180 days, establish appropriate written policies, procedures, and training regarding continuing disclosure obligations; comply with existing continuing disclosure undertakings within 180 days, including updating past delinquent filings; disclose the settlement in future offering documents for the next five years; certify in writing compliance with the undertakings; and cooperate with any subsequent investigations by the SEC. No civil penalties were assessed in the settlement orders.³

Takeaways

The orders provide some insight into what the SEC considers to be a material false or misleading statement in an offering document.

- In addition to clear cases of misrepresentation where an official statement falsely stated that the respondent never failed to comply with previous continuing disclosure undertakings, the settlement orders also identify as violations offering statements that did not fully disclose all failures to comply with continuing disclosure obligations in the previous five years, including failing to timely file required notices of late filings and failing to file properly with EMMA.
- Failure to timely file required notices of late filings were present in almost every settlement order, however such a failure was never the only item of noncompliance listed in an order.

- Thirty-six days was the shortest period for a single undisclosed late filing of an annual report,⁴ while other settlements related to filings that were late by years.
- Failure to file a material event notice was by itself a material violation of continuing disclosure obligations in one order.⁵
- The orders also note several instances where an issuer failed to file its annual financial information by the time it issued a new offering, though the report was due before, emphasizing the importance of ensuring compliance with prior continuing disclosure obligations every time the issuer issues new municipal securities.

With orders against at least one issuer in each of 45 states, the SEC is sending the message that noncompliance with continuing disclosure obligations has been widespread throughout the industry. It is unclear whether the SEC will be filing more actions against issuers in the future, as the press release is silent on the matter, unlike prior releases describing the MCDC as “ongoing” (first MCDC Underwriter release),⁶ “continuing” (second MCDC underwriter release),⁷ and “complete” (“SEC Completes Muni-Underwriter MCDC Release”).⁸

¹ <https://www.sec.gov/news/pressrelease/2016-166.html>.

² Obligated persons are “typically nonprofit entities such as hospitals and colleges that borrow the proceeds of bond issuances and are obligated to pay principal and interest on the bonds.” *Id.*

³ In contrast to the offer made to underwriters under the MCDC Initiative, the MCDC offer to issuers included no civil penalties. See *Municipalities Continuing Disclosure Cooperation Initiative* at <https://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml>.

⁴ *In the Matter of Borough of Roselle Park in the County of Union, New Jersey*, Securities Act Release No. 10134 (August 24, 2016).

⁵ *In the Matter of Ascension Health Alliance*, Securities Act Release No. 10129 (August 24, 2016).

⁶ <https://www.sec.gov/news/pressrelease/2015-125.html>.

⁷ <https://www.sec.gov/news/pressrelease/2015-220.html>.

⁸ <https://www.sec.gov/news/pressrelease/2016-18.html>.