March 11, 2014

SEC Encourages Municipal Bond Issuers and Underwriters to Self-Report Violations of Securities Laws

Yesterday, the Securities and Exchange Commission (the "SEC") announced a new initiative to encourage municipal?bond issuers and underwriters to self-report certain violations of the federal securities laws rather than wait for their violations to be detected. The initiative is intended to address violations of the federal securities laws in connection with certain representations about continuing disclosures in bond offering documents.

The Initiative

The new initiative is called the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"). Under the MCDC Initiative, the Enforcement Division of the SEC will recommend standardized, favorable settlement terms to municipal issuers, obligated persons and underwriters that self-report possible violations involving materially inaccurate statements in bond offerings about their prior compliance with continuing disclosure obligations under Rule 15c2-12 of the Securities Exchange Act of 1934 (the "Rule").

The Rule

The Rule prohibits underwriters from buying or selling municipal securities unless the issuer agrees to provide continuing disclosure regarding the security and the issuer, such as its financial condition and operating data. The Rule further requires that any final official statements prepared in connection with a primary offering contain a description of any occurrences in the previous five years in which the issuer failed to comply, in all material respects, with its continuing disclosure obligation. The SEC may file enforcement actions against municipal issuers for inaccurately stating in final official statements that they have substantially complied with their prior continuing disclosure obligations. Similarly, the SEC may file an action against underwriters for violating anti-fraud provisions to the extent the underwriters did not conduct adequate due diligence in determining whether issuers have complied with their obligations.

Eligibility for the MCDC Initiative

According to the SEC, issuers who may have made materially inaccurate statements in a final official statement, and the lead or sole underwriter in both competitive and negotiated underwritings in which the final official statement contains materially inaccurate statements regarding an issuer's compliance with continuing disclosure, should consider self-reporting to the SEC. In addition, issuers and underwriters that have already been contacted by the SEC as of March 10, 2014, but against which no enforcement action has yet been taken, *may* be eligible for the MCDC Initiative and may contact the SEC to discuss eligibility. These issuers and underwriters may self-report by submitting a completed questionnaire no later than ***September 10, 2014***.

Standardized Settlement Terms

If an entity meets the requirements of the MCDC Initiative and the Enforcement Division decides to recommend enforcement action against the entity, the Enforcement Division will recommend that the SEC accept a settlement in which the underwriter or issuer neither admits nor denies the findings of the SEC and the eligible issuer or underwriter consents to a cease and

desist proceeding.

Standardized settlement terms will include agreeing to certain undertakings. For issuers, these include establishing appropriate policies and procedures regarding continuing disclosure obligations, updating past delinquent filings, and cooperating with the Enforcement Division in the investigations of others. For underwriters, these terms include retaining an independent consultant to conduct a compliance review, taking reasonable steps to enact recommendations and cooperating with the Enforcement Division in the investigation of others.

For eligible issuers, the Enforcement Division will recommend that the SEC accept a settlement in which no payment of civil penalties by the issuer is required. For eligible underwriters, the recommended settlement will require the underwriter to consent to the payment of a civil penalty between $20,000 and $500,000, depending on the value of the offering and number of offerings containing a materially false statement.

Andrew J. Ceresney, director of the Enforcement Division, cautioned that "those who do not self-report and instead decide to take their chances can expect to face increased sanctions for violations."[1]

No Relief from Individual Liability

The MCDC Initiative applies only to eligible issuers and underwriters, and there is no assurance that individuals associated with the eligible entities, such as municipal officers or employees of underwriting firms, will be eligible for favorable settlement terms.

Any issuer or underwriter considering self-reporting under the MCDC Initiative may wish to consult with counsel prior to submission of the self-reporting questionnaire. The attorneys in Day Pitney's Municipal Finance group routinely counsel clients on proactively addressing compliance with their disclosure obligations. Please feel free to contact any of the attorneys listed to the right of this alert if you would like to discuss this alert or your disclosure obligations.

[1] SEC Launches Enforcement Cooperation Initiative for Municipal Issuers and Underwriters, *Press Release* 2014-46, March 10, 2014, available at: http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541090828.