August 1, 2014

SEC Modifies MCDC Initiative to Encourage Participation

On July 31, the Securities Exchange Commission (SEC) announced modifications to its Enforcement Division's Municipalities Continuing Disclosure Cooperation Initiative (Initiative). In an effort to encourage as much participation as possible in the Initiative, the SEC has extended the self-reporting deadline for issuers and obligated parties, established tiered caps on civil penalties, and offered to consider "reasonable, good faith and documented efforts" to identify potential violations, even if those violations are not discovered until after the expiration of the Initiative.

For issuers and obligated persons, the SEC has extended the self-reporting deadline from September 10, 2014, to December 1, 2014. The extension will provide issuers and obligors with more time to complete their reporting requirements and allows issuers time to consult with their underwriters and make determinations regarding appropriate next steps. ***The self-reporting deadline remains unchanged for underwriters.***

Under the Initiative, the SEC agreed to recommend standardized, favorable settlement terms to municipal issuers, obligated persons and underwriters that self-report possible violations involving materially inaccurate statements in bond offerings. To encourage smaller underwriters to participate in the Initiative, the SEC is rolling out a new tiered approach to the cap on civil penalties for eligible underwriters:

For underwriters with 2013 reported total annual revenue of:	the cap on civil penalties is:
less than $20 million	$100,000
$20 million to $100 million	$250,000
more than $100 million	$500,000

Until the cap is reached, underwriters will still be required to pay civil penalties:

For each offering of:	the penalty is:
$30 million or less	$20,000
more than $30 million	$60,000

Because an issuer must disclose in public finance offering documents whether at any time in the past five years the issuer failed to comply, in all material respects, with any previous commitment to provide continuing disclosure, issuers must check

their disclosures extending as far as back 2004 if they issued bonds in 2009. Unfortunately, many municipal underwriters have experienced difficulties identifying potential violations for periods when filings were made in the Nationally Recognized Municipal Securities Information Repository (NRMSIR) system, which predated the Electronic Municipal Market Access (EMMA) system. EMMA was not launched until 2008, and filing on EMMA was not required until 2009. The SEC has stated that it recognizes that the limitations of the NRMSIR system may make it difficult for issuers to identify certain violations during the period of the Initiative even if they make good-faith efforts to identify potential violations. If violations are identified by the SEC after the expiration of the Initiative, the SEC will consider "reasonable, good faith, and documented efforts in deciding whether to recommend enforcement action and, to the extent enforcement action is recommended, in determining relief."

The SEC originally launched the Initiative on March 10, 2014. To view the SEC's March 10, 2014, press release, see here.

To view the July 31, 2014, press release, see here.

Since its launch, the Initiative has come under heavy criticism from members of the municipal bond market for pitting issuers and underwriters against one another.

Any issuer or underwriter considering self-reporting under the 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.