

# Chapman Client Alert

August 26, 2016

Current Issues Relevant to Our Clients

## SEC Settles with 71 Municipal Issuers and Obligated Persons under Its MCDC Initiative

On August 24, 2016, the Securities and Exchange Commission (“SEC”) issued cease-and-desist orders to 71 municipal issuers and obligated persons in response to voluntary self-reporting of potential misrepresentations in municipal bond offering documents regarding compliance with prior disclosure obligations under the SEC’s Municipalities Continuing Disclosure Cooperation (“MCDC”) initiative. Established in 2014, the MCDC initiative offered issuers<sup>1</sup> and underwriters the opportunity to self-report potential violations during the previous five years in exchange for more lenient settlements than would otherwise be available for violations which were not self-reported. Our initial Client Alert on the MCDC initiative (dated March 12, 2014) can be found [here](#). The SEC previously settled with 72 underwriters under the MCDC initiative in three rounds of orders. Our Client Alerts on the MCDC settlements with underwriters (dated June 25, 2015; October 5, 2015; and February 3, 2016) can be found [here](#), [here](#), and [here](#).

The SEC noted that each order is based on information that was self-reported by the issuer. The issuers neither admitted nor denied the alleged violations in the settlements.

The 71 orders involved state-wide issuers as well as counties, school districts, colleges and universities (both public and private), small towns and non-profit healthcare providers from 45 states.

In these orders, the SEC alleged that in official statements, private placement memoranda or remarketing circulars, issuers made materially false and/or misleading statements and/or material omissions about their compliance with prior continuing disclosure undertakings (“CDUs”) under SEC Rule 15c2-12.

Each order included examples of instances in which an issuer failed, in the judgment of the SEC, to comply in all material respects with prior CDUs and where the offering document did not disclose such failure.

Below is a summary of the disclosure failures in the issuers’ offering documents that were highlighted in the SEC orders:

- Issuers did not disclose a failure to file annual audited financial statements and/or required annual financial information, and did not file a “failure to file” notice.
- Issuers did not disclose that required information was filed late and did not file a “failure to file” notice detailing the delay. The orders specified the number of days late. None of the orders specified an instance in which an issuer self-reported a very short delay (less than 30 days) in filing as its only failure.

- Issuers did not disclose incomplete filings or missing operating data.
- Issuers did not disclose a failure to file event notices for defeasances or acquisitions.
- Issuers whose CDUs required the delivery of additional types of information, such as interim or quarterly financial statements, did not disclose failures to make such filings.
- Issuers who disclosed that they filed on time but in the incorrect location or with a third party who did not then file on time were nevertheless alleged to have failed to disclose the late filing.

Under the settlements, the issuers agreed to undertake, and to certify compliance with, the following:

- Within 180 days of the order, the issuer will establish written policies and procedures and periodic training regarding continuing disclosure obligations in order to comply with the federal securities laws, including designating a person at the issuer who is responsible for such compliance.
- Within 180 days of the order, the issuer must update any past delinquent filings if the issuer is not currently in compliance with its CDUs.
- For the next five years, the issuer will disclose the terms of the settlement in its offering documents.

<sup>1</sup> In this Client Alert, “issuer” also refers to an “obligated person” under SEC Rule 15c2r 12.

Issuers also agreed to cooperate with any subsequent SEC investigations, including any investigation of “the roles of individuals and/or other parties involved.”

These orders are the first issuer settlements under the MCDC initiative. We do not know if there will be additional issuer settlements under MCDC.

### For More Information

If you would like further information concerning the matters discussed in this article, please contact a member of our Public Finance Group or visit us online at [chapman.com](http://chapman.com).

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