

**Executive Summary**  
**Municipalities Continuing Disclosure Cooperative Initiative**  
**July 2014**

**I. Introduction**

The *Municipalities Continuing Disclosure Cooperative Initiative* (the "MCDC Initiative") is an initiative recently announced by the Division of Enforcement (the "Division") of the U.S. Securities and Exchange Commission (the "Commission"). The MCDC Initiative is meant to address what the Division has described as "potentially widespread violations of securities laws" by issuers and underwriters of municipal bonds, arising from potentially inaccurate statements in offering documents ("Official Statements") describing issuers' past compliance (or non-compliance) with their continuing disclosure agreements ("Continuing Disclosure Agreements").

**II. Requirements of Rule 15c2-12**

Rule 15c2-12 ("Rule 15c2-12") promulgated by the Commission under the Securities Exchange Act of 1934 requires an underwriter in a municipal bond offering to determine that the issuer of the bonds has undertaken, pursuant to a written Continuing Disclosure Agreement, to provide financial information — including the issuer's financial statements, certain operating data, and notice of the occurrence of certain events — on a continuing basis while the bonds are outstanding. Rule 15c2-12 further requires that Official Statements used to offer bonds to investors must describe any instances in the previous five years (from the date of the Official Statement) in which the issuer failed to comply, in all material respects, with its prior Continuing Disclosure Agreements.

**III. Reporting of Potentially Inaccurate Statements; Favorable Settlement Terms**

The Division is concerned with Official Statements that inaccurately describe the issuer's prior continuing disclosure compliance — e.g., Official Statements stating that the issuer has never failed to comply with its Continuing Disclosure Agreements, when in fact the issuer has failed to make the filings required under those agreements. If an issuer or underwriter participates in the MCDC Initiative by self-reporting related transactions, the Division may (or may not) commence enforcement proceedings against the issuer or underwriter, but in connection with such proceedings would recommend what the Division describes as favorable, standardized settlement terms. For issuers, the standardized settlement terms require the issuer to agree to a cease and desist order, and to agree that the issuer will:

- Establish appropriate policies and procedures and training regarding continuing disclosure obligations within 180 days of the institution of the enforcement proceedings;
- Comply with existing continuing disclosure undertakings, including updating past delinquent filings within 180 days of the institution of the proceedings;

- Cooperate with any subsequent investigation by the Division regarding the potentially inaccurate statements, including the roles of individuals and/or other parties involved;
- Disclose in a clear and conspicuous fashion the settlement terms in any final official statement for an offering by the issuer within five years of the date of institution of the proceedings; and
- Provide the Commission staff with a compliance certification regarding the applicable undertakings by the issuer on the one year anniversary of the date of institution of the proceedings.

#### **IV. No Civil Penalty for Issuer Participants**

The standardized settlement terms would not require issuers to pay a civil penalty. In contrast, the Division has stated that in any actions against issuers who do not self-report under the MCDC Initiative, it "will likely recommend and seek financial sanctions." The MCDC Initiative entails a similar approach for underwriters, who are subject to limited civil penalties (capped at \$500,000) if they self-report, but face larger penalties if they do not.

#### **V. "Prisoner's Dilemma"**

Issuers and underwriters participate in the MCDC Initiative by submitting a questionnaire ("MCDC Questionnaire") that requires identification of all parties to the related bond financings, including the issuer and the underwriter (as well as the financial advisor, bond counsel, underwriter's counsel and disclosure counsel, if any). The Division has stated that requiring issuers to report underwriters and requiring underwriters to report issuers intentionally creates a "prisoner's dilemma" in which both are incentivized to self-report.

#### **VI. No Assurances for Individuals**

It is important to note that the MCDC Initiative applies only to issuers and underwriters, not to individuals. The Division has stated that it will provide no assurance that individuals associated with issuers and underwriters, such as municipal officials and employees of underwriting firms, will be offered similar settlement terms if they have engaged in violations of federal securities laws.

#### **VII. Additional Information**

A copy of the Division's announcement describing the MCDC Initiative in detail (the "SEC Announcement") is attached to this Executive Summary. Industry groups and associations have also published various commentaries regarding the MCDC Initiative. One such publication, an alert from the Government Finance Officers Association (the "GOFA Alert") is also attached. We encourage you to review these materials for additional information.