

WHAT DOES THE SEC MEAN TO YOU?



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Southeastern Conference



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NO – THE SECURITIES AND EXCHANGE COMMISSION



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The United States Securities and Exchange Commission is an agency of the United States Government which has as its mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Creation of the SEC

- The SEC's creation was in an era that was ripe for reform. The stock market crashed in October 1929, public confidence in the markets plummeted. There was a consensus that for the economy to recover, the public's faith in the capital markets needed to be restored.

Creation of the SEC

- Congress passed the Securities Act of 1933. This law together with the Securities Exchange Act of 1934 (together, the "Securities Acts"), which created the SEC, was designed to restore investor confidence in our capital markets by providing investors and markets with more reliable information and clear rules of honest dealing.

Organization of the SEC

- The SEC consists of five Commissioners appointed by the President, with staggered five-year terms.

Organization of the SEC

- It is the responsibility of the Commission to:
 - Interpret and enforce federal securities laws;
 - Issue new rules and amend existing rules;
 - Oversee the inspection of securities firms, brokers, investment advisors, and rating agencies;

Organization of the SEC

- Oversee private regulatory organizations in the securities, accounting, and audit fields; and
- Coordinate U.S. securities regulation with federal, state, and foreign authorities.

Organization of the SEC

- The SEC has five divisions:
 - Division of Corporation Finance
 - Division of Trading and Markets
 - Division of Investment Management
 - Division of Economic and Risk Analysis
 - Division of Enforcement

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Direct Oversight

- The SEC oversees the key participants in the securities world, including securities exchanges, **securities brokers and dealers, underwriters, investment advisors**, and mutual funds. Here the SEC is concerned primarily with promoting the disclosure of important market-related information, maintaining fair dealing, and protecting against fraud.
- The SEC **does not** directly regulate or oversee issuers of municipal debt.

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Rule 15c2-12 (the "Rule") - Disclosure

- The Rule was first adopted in 1989.
- It is intended to enhance disclosure, and thereby reduce fraud, in the municipal securities market by establishing standards for obtaining, reviewing, and disseminating information about municipal securities by their underwriters.

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The Rule - Disclosure

- In 1989, the Rule required brokers, dealers, and municipal securities dealers acting as underwriters in primary offerings of municipal securities of \$1,000,000 or more to obtain, review, and distribute to potential customers copies of the issuer's official statement.
- Established the requirements of disclosure.

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Disclosure

- Providing Information to Prospective Bidders
 - Official Statement
 - Defined as a document or set of documents prepared by an issuer of municipal securities or its representative that sets forth information concerning the:
 - Proposed terms of the proposed issue;
 - Financial information or operating data concerning the issuer; and
 - Information concerning other entities, enterprise funds, accounts or other persons which would be material to an evaluation of the offering.

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Disclosure

- Recommended Disclosure according to the National Federation of Municipal Analysts Recommended Best Practices
 - General Disclosure Items
 - Demographics/Economy
 - Financial Statements
 - General Revenue Base
 - Expenditures
 - Debt and Financial Obligations
 - Cash Flow Financings

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Disclosure

- Basic Anti-Fraud Provisions Apply - Rule 10b-5
 - Disclosure documents are subject to prohibition against:
 - false or misleading statements of material fact; and
 - the omission of necessary material facts.

The Rule – Continuing Disclosure

- Amendments to the Rule went into effect in 1995 which prohibited underwriters from purchasing or selling municipal bonds unless the underwriter reasonably determined that the issuer had entered into a continuing disclosure agreement ("CDA").
- Established the requirement of continuing disclosure.

The Rule – Continuing Disclosure

- Pursuant to a CDA, an issuer would be required to provide:
 - Annual financial and operating information and audited financial statements;
 - Notices of the occurrence of any of eleven specific events; and
 - Notices of the failure of an issuer or obligated person to make a financial submission as required by a continuing disclosure agreement.

The Rule – Continuing Disclosure

- Required information had to be physically filed with four national repositories:
 - Bloomberg L.P.;
 - DPC Data;
 - Interacting Data Price and Reference Data; and
 - Standard & Poor's.

Continuing Disclosure

In 2008, the SEC designated the Municipal Securities Rulemaking Board (the “MSRB”) as the central repository for all such disclosures by municipal issuers. Also in 2008, the MSRB launched the EMMA (Electronic Municipal Market Access) website. EMMA is an online system that provides public access to disclosure documents.

Continuing Disclosure

- In 2009, municipal bond issuers began to provide electronic copies of continuing disclosure documents to the MSRB through EMMA, which made them immediately available to the public.
- In 2010, the SEC approved rule changes improving the quality and timeliness of municipal securities continuing disclosure with an effective date of December 1, 2010.

Continuing Disclosure

Sample School District Continuing Disclosure Requirements

- The School District's Annual Report shall contain or incorporate by reference the most recent audited financial statements, which shall be prepared in conformity with generally accepted accounting principles (or, if not in such conformity, to be accompanied by a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information) applicable to governmental entities such as the School District, and shall, in addition, contain or incorporate by reference the following information relating to the most recently completed fiscal year:

Continuing Disclosure

Sample School District Continuing Disclosure Requirements

- School District enrollment;
- Total state appropriations subject to withholding under Article X, Sec. 15, South Carolina Constitution;
- Funding under Education Finance Act and Education Improvement Act;
- Outstanding Indebtedness of the School District;

Continuing Disclosure

Sample School District Continuing Disclosure Requirements

- Assessed value and estimated market value of all taxable property in School District;
- Tax levy for the School District;
- Tax collections for the School District; and
- Ten largest taxpayers (including fee-in-lieu-of-tax) for the School District.

Continuing Disclosure

- In 2010, the SEC updated its interpretive guidance and emphasized that:
 - Underwriters have a duty under the antifraud provisions of the federal securities laws, to review the issuer's disclosures in a professional manner with respect to accuracy and completeness of statements made in connection with an offering;

Continuing Disclosure

- Underwriters are required to carefully evaluate the likelihood that an issuer will comply on a timely basis with its disclosure undertakings; and
- Underwriters should obtain evidence reasonably sufficient to determine whether and when annual filings and event notices, pursuant to an issuer's disclosure undertakings, were in fact provided, such as by a review of EMMA.

Continuing Disclosure

- In 2012, the SEC published a release indicating that underwriters were not sufficiently complying with their responsibilities.
- Underwriters and issuers took notice in a very real way.
 - Underwriters increased their level of due diligence
 - Issuers found themselves being required to turn to dissemination agents.

Municipal Continuing Disclosure Cooperation Initiative (MCDC)

- MCDC Initiative was proposed by the Enforcement Division of the SEC and established in connection with the Rule and anti-fraud provisions of the Securities Acts.
- The Rule prohibits underwriters from selling municipal securities unless an issuer has committed to annual financial and operating disclosure under a CDA.
- Securities Acts prohibit material misstatements and omissions by an issuer in an Official Statement ("OS"), including material misstatements about prior compliance with disclosure obligations under an existing CDA.

MCDC

- Under the initiative, the SEC allowed/encouraged underwriters and issuers to voluntarily self-report any time in the past five years (2014-2009) when an issue was sold with offering documents that did not identify recent failures to comply with continuing disclosure requirements or that contained a false or misleading statement about the issuer's compliance with continuing disclosure.

MCDC

- Dealers/underwriters had until September 10, 2014 to self-report and issuers had until December 1, 2014.
- While confirmation from the SEC is unavailable, industry sources believe most dealers/underwriters and thousands of issuers submitted MCDC filings.

MCDC

- In the beginning, the SEC focused on underwriters/dealers.
- 72 underwriters representing 96% of the municipal market have paid a total of \$18 million to settle under MCDC.
- Enforcement actions were taken. Firms did not admit or deny SEC findings.
- Penalties were based on size of underwritings – maximum of \$500,000 for 10 firms; smallest \$40,000

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MCDC

- SEC has now turned its attention to issuers.



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MCDC

Recommended Settlement Terms for Issuers who participated in MCDC

- Must consent to cease and desist proceeding for violation of Securities Act of 1933.
- Neither admit nor deny SEC's findings.
- Issuer pays no civil penalty.

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MCDC

Recommended Settlement Terms for Issuers (cont.)

- Establish policies and procedures on continuing disclosure. – See sample beginning on next slide
- Comply with existing continuing disclosure undertakings.
- Cooperate with subsequent investigation by the SEC Enforcement Division.
- Disclose settlement terms in any OS within the next five years.
- Provide compliance certification to the SEC one year after institution of proceedings.

MCDC

Sample Continuing Disclosure Procedures (can be incorporated into bond resolution)

- The [title of school district finance officer] or the equivalent thereto (the "CFO") of the School District shall be responsible for compliance with these written procedures and for compliance with any continuing disclosure obligations undertaken by the School District or imposed upon the School District by state or federal law or regulations. The CFO is permitted to obtain the assistance of his or her staff and authorized to obtain professional assistance to cause this information to be compiled and provided, but the ultimate responsibility for the dissemination of the information will remain with the CFO.

MCDC

Sample Continuing Disclosure Procedures (can be incorporated into bond resolution)

- The CFO shall acquire a clear understanding regarding the School District's continuing disclosure obligations. Through participation in professional groups such as the South Carolina Association of School Business Officials and the South Carolina Government Finance Officers Association, the CFO shall participate in continuing education programs regarding continuing disclosure.

MCDC

Sample Continuing Disclosure Procedures (can be incorporated into bond resolution)

- For each issuance of bonds that involves a continuing disclosure obligation, the CFO shall review such continuing disclosure undertaking and discuss with the School District's bond counsel, financial advisor and underwriter, if any, prior to the execution of such continuing disclosure undertaking.

MCDC

Different Points of View

Mary Jo White, SEC Chair, has been quoted saying: "The MCDC Initiative has already resulted in significant improvements to the municipal securities market, including heightened awareness of issuers' disclosure obligations and enhanced disclosure policies and procedures."

MCDC

Different Points of View

Ben Watkins, Florida's director of bond finance who represented the Government Finance Officers Association in a panel discussion, advocated for voluntary efforts among industry participants to solve disclosure challenges instead of a regulatory or enforcement solution like the one chosen by the SEC. "My own personal point of view is [MCDC] was the most misguided, coercive, punitive approach to improving continuing disclosure that I have ever seen. "It was a monumental waste of resources."

MCDC

Different Points of View

Watkins said that a study GFOA had conducted found that MCDC led to an average out-of-pocket cost for issuers of between \$7,000 and \$10,000. Others said the main problem with disclosure lies with an issuer's staff and resources. Watkins said getting everyone educated about proper disclosure is "a monumental task" and added that while larger issuers usually have "robust" disclosure, many small issuers have trouble.

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MCDC

Updates reported in The Bond Buyer since August 15, 2016

- The National Federation of Municipal Analysts in a letter to leaders of the finance, banking and tax committees in Congress, the SEC and the Municipal Securities Rulemaking Board urging that the SEC regulate issuers. Ben Watkins, director of bond finance for Florida, called the NFMA's letter "very extreme."

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MCDC

Updates reported in the Bond Buyer since August 15, 2016

- "We believe that the time has come for the [SEC] to implement the recommendation for improved disclosure made in [its 2012 report] and to seek broader legislative authority that will strengthen the SEC's oversight of the municipal securities market," William Oliver, NFMA's industry and media liaison, said in a press release.

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MCDC

Updates reported in the Bond Buyer since August 15, 2016

- Municipal issuers are blasting the NFMA's suggestions that Congress give the SEC new authority to regulate issuers' disclosures, calling it overly burdensome and ineffective. Ben Watkins, director of bond finance for Florida, called the NFMA's letter "very extreme."

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MCDC

Updates reported in the Bond Buyer since August 15, 2016

- "I can't think of anything worse for our market," Watkins said of what he added would be another piece of the SEC's already dysfunctional" regulation that would further burden issuers if the proposal becomes a reality.

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MCDC

Updates reported in the Bond Buyer since August 15, 2016

- Frank Shafroth, director of the Center for State and Local Leadership at George Mason University, said he finds the SEC "to be virtually unaccountable" and its "ability to relate to state and local leaders to be almost non-existent."

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MCDC

Updates reported in the Bond Buyer since August 15, 2016

- David Erdman, capital finance director for Wisconsin agreed, saying there were a number of goof things in the NFMA letter but that the proposal for SEC oversight was “alarming.”

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MCDC

Updates reported in the Bond Buyer since August 15, 2016

- On August 24, 2016, the SEC published settlements with 71 issuers under MCDC.
- The SEC has seen a dramatic uptick in the number of disclosure filings

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MCDC

Excerpts from SEC Press Release:

Washington D.C., Aug. 24, 2016 — The Securities and Exchange Commission today announced enforcement actions against 71 municipal issuers and other obligated persons for violations in municipal bond offerings.

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MCDC

Excerpts from SEC Press Release:

The actions were brought under the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative, a voluntary self-reporting program targeting material misstatements and omissions in municipal bond offering documents. The initiative offered favorable settlement terms to municipal bond underwriters, issuers, and obligated persons that self-reported certain violations of the federal securities laws.

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MCDC

Excerpts from SEC Press Release:

The SEC found that from 2011 to 2014, the 71 issuers and obligated persons sold municipal bonds using offering documents that contained materially false statements or omissions about their compliance with continuing disclosure obligations. Continuing disclosure provides municipal bond investors with important information, including annual financial reports, on an ongoing basis.

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MCDC

Excerpts from SEC Press Release:

"The diversity among the 71 entities in these actions demonstrates that continuing disclosure failures were a widespread and pervasive problem in the municipal bond market," said Andrew Ceresney, Director of the SEC Enforcement Division. "The MCDC Initiative has brought attention to this important issue and resulted in increased compliance by municipal issuers and underwriters."

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MCDC

Excerpts from SEC Press Release:

The parties settled the actions without admitting or denying the findings and agreed to cease and desist from future violations. Pursuant to the terms of the initiative, they also agreed to undertake to establish appropriate policies, procedures, and training regarding continuing disclosure obligations; comply with existing continuing disclosure undertakings, including updating past delinquent filings, disclose the settlement in future offering documents, and cooperate with any subsequent investigations by the SEC.

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MCDC

Excerpts from SEC Press Release:

The terms of the settlements reflect the credit these issuers earned for their cooperation in self-reporting pursuant to the MCDC initiative," said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division's Public Finance Abuse Unit. "Because the issuers also voluntarily agreed to take steps to prevent future violations, both they and their investors have benefited from the initiative."

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MCDC

Excerpts from SEC Press Release:

The SEC has now filed a total of 142 actions against 143 respondents as part of the MCDC Initiative. Today's actions are the first against municipal issuers since the first action under the initiative was announced in July 2014 against a California school district. The SEC filed actions under the initiative against a total of 72 municipal underwriting firms, comprising 96 percent of the market share for municipal underwritings, in June 2015, in September 2015, and in February 2016.

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