

June 9, 2014

VIA Electronic Mail

The Honorable Mary Jo White
Chair
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-7010

RE: Municipalities Continuing Disclosure Cooperation Initiative (the “MCDC Initiative”)

Dear Ms. White:

On March 10, 2014, the Division of Enforcement (the “*Division*”) of the U.S. Securities and Exchange Commission (the “*Commission*”) announced its MCDC Initiative whereby the Division would recommend favorable settlement terms to issuers and obligors as well as underwriters if they self-report possible violations of the Federal antifraud laws relating to materially inaccurate statements relating to prior compliance with continuing disclosure obligations. The Bond Dealers of America (“*BDA*”) is writing this letter to voice concerns and suggest modifications to the MCDC Initiative.

BDA is the only DC-based group representing the interests of middle-market securities dealers and banks focused on the U.S. fixed income markets. BDA’s members collectively were responsible for over one-third of all underwriting transactions in 2012, and many of those transactions were with small and mid-sized issuers. Accordingly, we believe that we uniquely offer insight into how the MCDC Initiative will impact middle-market underwriters and issuers.

CONCERNS WITH MCDC INITIATIVE

Unproductive NRMSIR Review. BDA members believe that the MCDC Initiative can identify areas where disclosure concerning compliance with continuing disclosure undertakings has not been materially accurate. In combination with the SEC’s March 19, 2012 National Examination Risk Alert regarding continuing disclosure due diligence for underwriters, the initiative has underscored the importance of municipal market participants paying close attention to their disclosure and due diligence obligations in connection with these and other disclosures. However, BDA members believe that the MCDC Initiative has caused a financial and personnel investment by issuers and

underwriters that goes beyond what is needed to achieve the goals of the SEC because its scope relies upon the now defunct NRMSIR system.

Since the development of the continuing disclosure regime in 1995, issuers and obligated persons were required to post their annual reports and material event notice filings to the NRMSIRs. Starting in July 2009, the MSRB's EMMA system became operational and the SEC designated the EMMA system as the sole NRMSIR and thereby eliminated the NRMSIR system. The EMMA system has been a vast improvement over the NRMSIR system for the following reasons:

- The EMMA system is available to anyone who has internet access. The NRMSIRs were not generally available to the public but instead were available on a subscription basis only. Very few issuers had access to NRMSIRs and law firms (such as underwriter's counsel) had little to no access because the subscriptions to any of the NRMSIRs were very expensive. Therefore, the ability for all parties to be working to ensure accuracy was impaired.
- The EMMA system allows issuers and obligors to file annual reports and material event notices to one repository. Under the NRMSIR system, issuers and obligors were required to file with multiple repositories, with the result being that many issuers filed with some but not all NRMSIRs -- meaning that no one NRMSIR could assure 100% complete filings.
- The EMMA system is much more user friendly than the NRMSIRs, with users being able to easily view all primary and continuing disclosure for an offering.

The SEC and MSRB underwent several regulatory changes to provide for the change from the NRMSIR system to the EMMA system, which shows how universally the municipal market and its regulators believed that the NRMSIR system had failed to accomplish its purposes. The fragmented NRMSIR system substantially contributed to some of the inadequacies in disclosing continuing disclosure compliance failures.

The MCDC Initiative is having the effect of causing underwriters and issuers to dig up the NRMSIR information. Right now, underwriters and issuers are spending substantial financial and personnel resources to determine compliance under the failed and antiquated NRMSIR system. This is proving to be costly and burdensome for the following reasons:

- Some of the NRMSIRs are no long in existence and those that are still require subscriptions to access their information.
- One of the NRMSIRs apparently produced unreliable data for 2009, such that many filings that were in fact made do not appear as though they were made (which is producing false positives).

- Issuers and obligors still largely have no access to any of the subscriptions that continue to provide access to the NRMSIRs.
- Very few vendors have maintained subscriptions to the old NRMSIRs and even the ones that have are not able to check whether all filings were made with all NRMSIRs, which would be required to complete the analysis required under the MCDC Initiative.

Given the difficulties associated with the NRMSIR system, BDA members believe that the MCDC Initiative is causing unnecessary and unhelpful investigations into this failed defunct system that will lead to a quantity of, and not quality of, data. If the SEC does not limit the scope of the initiative in order to elicit the most valuable data, an onslaught of data will make the task of determining the important instances of "false statements" considerably more difficult. From September 10, 2009 through May 30, 2014, there were 54,739 total issues subject to the initiative. That number does not even account for the data that must be reviewed and verified five years prior to 2009, much of which relies, unfortunately, on NRMSIRs. Even a hand-selected subset of these based upon underwriter and issuer cooperation creates an enormous workload for the SEC, issuers and underwriters alike and at the end of the process, using the NRMSIRs will have produced unreliable information at best. We believe that quality and not, quantity will establish the most effective initiative.

It is in everyone's interest that the MCDC Initiative has the most positive impact on changing disclosure behavior in the municipal market. Isolating those disclosure failures that occurred with respect to compliance under the EMMA system will identify far more relevant failures, which allows for the MCDC Initiative to have a more effective impact.

Unnecessarily Short Deadline. BDA members believe that one of the keys to the success of the MCDC Initiative is the ability of underwriters and issuers to discuss when they believe that an offering is a candidate for self-reporting. Given the structure of the MCDC Initiative, an underwriter will need to review potentially thousands of transactions and the September 10 deadline gives underwriters little opportunity to discuss offerings they believe are candidates for self-reporting with the related issuer or obligor. Given the reality that there is no objective standard of materiality, underwriters will prove to be the best measure for issuers and obligors of when a statement is potentially materially false. That means that issuers and obligors are likely to wait for the underwriting community to help bring some guidance in this area. As it current stands, the short deadline of September 10 will have the effective cutting off almost all dialogue between underwriters and issuers and thereby will frustrate one of the potentially most valuable impact that the MCDC Initiative could have.

PROPOSALS FOR MODIFICATION OF MCDC INITIATIVE

To address these concerns, the BDA is requesting that the Division and the Commission change the MCDC Initiative in the following respects:

- Specifically allow issuers and obligors as well as underwriters to only evaluate statements in offering documents concerning compliance with continuing disclosure undertakings on the basis of filings that the issuer or obligor made on the EMMA system and provide assurances to them that they do not need to be concerned with the filing history of issuers or obligors on the NRMSIR system.
- Extend the deadline for self-reporting to December 15, 2014.

We would be happy to discuss these proposals for improving the quality of the results of this initiative. If my staff or I can be of any assistance, do not hesitate to contact me at 202.204.7901.

Sincerely,

A handwritten signature in blue ink that reads "Michael Nicholas". The signature is fluid and cursive, with the first name being more prominent.

Michael Nicholas
Chief Executive Officer

Cc: Commissioner Kara Stein
Commissioner Luis Aguilar
Commissioner Mike Piwowar
Commissioner Dan Gallagher
Mark Zehner, Division of Enforcement
Peter Chan, Division of Enforcement