BDA Bond Dealers of America

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June 30, 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:

As follow up to our letter dated June 9, 2014 in which the Bond Dealers of America ("BDA") voiced our concerns and suggested modifications to the U.S. Securities and Exchange Commission's (the "Commission") MCDC Initiative, we would now like to request a meeting with you or your staff to discuss and further explain the specific items we identified. Additionally, we are in receipt of a letter dated June 30, 2014 from LeeAnn Ghazil Gaunt, Unit Head, Municipal Securities and Public Pensions Unit, Division of Enforcement at the Commission, in which she addresses receipt of and acknowledges the concerns we had laid out to Chair White in our original letter on the MCDC Initiative. The intent of our letter here is to reinforce the need for the provisions we initially requested.

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 negatively impact middle-market underwriters and issuers.

Recognition of the MCDC Initiative's Value and Goals.

BDA members believe that the MCDC Initiative can identify areas where disclosure concerning compliance with continuing disclosure undertakings has not been materially accurate. The BDA understands the seriousness of ensuring the accuracy of statements in offering documents and believes that the MCDC Initiative is helping to underscore the seriousness of accurate and complete disclosure to the municipal securities market.

The Initiative's scope requires dealers to dig up filings in the incomplete and unreliable NRMSIR systems.

As the Commission's Division of Enforcement (the "Division") has repeatedly stated, the MCDC Initiative essentially requires a prudent review of past transactions and the evaluation as to whether the offering documents related to those transactions contain misrepresentations concerning past continuing disclosure compliance. While the MCDC Initiative is an opportunity to self-report, the Division has repeatedly stated that at the close of the initiative, it intends to substantially increase enforcement of the kinds of violations that are the subject of the initiative. In general, prudent dealers need to evaluate whether they may have exposure in this area, which requires them to review every offering in which they participated in order to evaluate whether the offering document misrepresented past continuing disclosure compliance.

When dealers review the transactions in which they were involved, they are encountering numerous practical problems with the NRMSIR system that render any review with respect to filings under the NRMSIRs essentially impossible to conduct in a meaningful and reliable way. Under the continuing disclosure undertakings in the NRMSIR era, issuers and obligors were required to file with all NRMSIRs, which primarily consisted of four different NRMSIRs. Since EMMA has become operational, these NRMSIRs are no longer needed. What has since occurred is that two of the NRMSIRs are no longer operational and one of the NRMSIRs has consistently produced unreliable information. What that means is that issuers and dealers simply cannot meaningfully evaluate representations that cover filings on the NRMSIRs.

In addition to the practical problems, we do not understand why the Commission would want industry participants to investigate filings on the NRMSIRs. The whole point of the EMMA system was to fix what was broken with the NRMSIR system. The Commission and MSRB undertook 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. In fact, the Commission itself noted how the NRMSIR system had become an obstacle in underwriters meeting their obligations when it wrote the following in connection with the 2010 amendments regarding continuing disclosure,

> "…the Commission notes that the launch of the MSRB's EMMA system should assist underwriters in complying with their obligations. To the extent underwriters must rely on NRMSIRs for disclosures made prior to the creation of EMMA, the Commission notes that such reliance is time-limited. Since final official statements of offerings subject to the Rule must disclose the failures of an issuer or obligated person to

> comply with continuing disclosure undertakings only for the previous five years, underwriters presumably will no longer need to rely on various NRMSIRs within approximately four years."[1]

Until EMMA became operational, the municipal market was forced to rely on NRMSRs even though the industry and the investor community all asserted for a number of years that the system was inadequate at best, and misleading at worst. What we find on the NRMSIRs today represents just that sentiment – information is incomplete, mislabeled and misfiled and will neither confirm nor deny compliance of an issuer with its continuing disclosure obligations.

Scale back the civil penalty cap for smaller firms.

As the only trade association representing small and middle-market broker dealer firms, we feel that the civil penalty cumulative cap of $500,000 should be lowered and tiered according to the firm's size. The BDA wants our member firms to be able to take advantage of the amnesty program, but in doing so at the $500,000 cap, we fear that it will cause them to face an unduly burdensome financial challenge and should therefore be tiered accordingly. We believe that the intent of the Commission was to place a reasonable cap on an underwriter's exposure; however, the $500,000 cap places a disproportionate burden on smaller firms with no associated tangible benefit connected to the Initiative.

Our cost is borne in the simplest terms in the expense of hiring an outside vendor to do the investigative work for upwards of hundreds of deals in addition to a possible fine of up to $500,000. The total cost could end up being upwards of $600,000 for some of our members. In the case of larger firms, this is a small hit but the result for a smaller firm in terms of dollar impact is disproportionate.

For a larger firm, eighty large percent of a the firm's violations would not be subject to penalty as a result of the cap. On the other hand, a smaller firm with a lesser number of transactions would not come close to the cap, but the penalty could still represent, by far and away, the largest fine ever levied against the firm.

Therefore, the current initiative could deal a crushing blow to small firms and especially when they want to do right by the Commission in coming forward with any discrepancies they discover as a result of being afforded the opportunity to take advantage of this initiative. We therefore ask the Commission to consider the real-world realities and the negative impact on doing business with this sort of civil penalty hanging over our heads.

Request for deadline extension.

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[1] Securities and Exchange Commission Release No. 34-62184A; File No. S7-15-09; Amendment to Municipal Securities Disclosure; Pgs. 95-96

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. As it currently stands, the short deadline of September 10 will have the effect of limiting dialogue between underwriters and issuers and thereby will frustrate one of the potentially most valuable impacts that the MCDC Initiative could have. Therefore, we would like to reiterate our request that the initiative deadline be extended until December 15, 2014.

Thank you for your consideration of our written requests. We would like to schedule a meeting with you or your staff to discuss these issues in greater detail. You can reach me by email at mnicholas@bdamerica.org or on my direct line at 202.204.7901.

Sincerely,

Michael Nicholas
Chief Executive Officer

Cc:

Commissioner Luis Aguilar
Commissioner Daniel Gallagher
Commissioner Michael Piwowar
Commissioner Kara Stein
Andrew Ceresney , Division of Enforcement
Peter Chan, Division of Enforcement
LeeAnn Ghazil Gaunt, Division of Enforcement
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