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New SEC Initiative Offers Municipal Issuers and Underwriters an Exit Strategy for Continuing Disclosure Violations

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The U.S. Securities and Exchange Commission Enforcement Division recently announced a program intended to resolve violations of federal securities laws regarding continuing disclosures in bond offering documents. The program, the Municipalities Continuing Disclosure Cooperation Initiative, offers favorable, standardized settlement terms to issuers and underwriters, if they self-report prior violations.

Rule 15c2-12 prohibits underwriters from purchasing or selling municipal securities, unless the issuer has committed to providing continuing disclosures about the security and the issuer. It also requires final official statements to contain a statement describing any instance in the previous five years in which the issuer failed to comply with previous continuing disclosure requirements. This rule can be enforced by the SEC under § 17(a) of the Securities Act of 1933 and/or § 10(b) of the Exchange Act.

Issuers may self-report if they may have made materially inaccurate statements in a final official statement regarding prior compliance with continuing disclosure obligations. In order to self-report, issuers must submit the SEC questionnaire attached to the Initiative release, found at the SEC's website between March 10, 2014, and midnight EST on September 9, 2014. Self-reporting may be beneficial because the Enforcement Division may then recommend the SEC accept a settlement with the following terms:

- No payment of any civil penalty.
- Issuer consents to a cease and desist order.
- Issuer does not have to admit or deny the Commission's findings.
- Issuer undertakes to
  - Establish appropriate policies, procedures, and training regarding continuing disclosure obligations,
  - Comply with existing continuing disclosure undertakings,
  - Cooperate with subsequent investigations,
  - Disclose the settlement in all offerings within the next 5 years,
  - Provide the SEC with a compliance certification.

Underwriters may self-report if they underwrote an offering in which the final official statement contains materially inaccurate statements regarding an issuer's prior compliance with continuing disclosure obligations. Underwriters must also submit the above referenced form between March 10 and midnight EST on September 9, 2014. If an underwriter self-reports, the Division will recommend the SEC accept a settlement with the following terms:

- Underwriter consents to a cease and desist order.
- Underwriter does not have to admit or deny the Commission's findings.
- Underwriter undertakes to:

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- Retain an independent consultant to conduct a compliance review and provide recommendations for due diligence process and procedures,
- Take reasonable steps to enact these recommendations,
- Cooperate with subsequent investigations,
- Provide the SEC with a compliance certification.
- A civil penalty payment as follows:
  - Offerings of $30 million or less- underwriter pays $20,000 per offering containing a materially false statement.
  - Offerings of more than $30 million- underwriter pays $60,000 per offering containing a materially false statement.
  - No underwriter will be required to pay more than $500,000 total in civil penalties under the Initiative.

For issuers and underwriters that do not self-report, if violations are later found, the SEC has indicated that it will likely seek financial sanctions and other remedies beyond those described in the Initiative.

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