

# SEC Municipal Advisor Rule

## *Overview and Current Key Elements to Consider*

International Bridge, Tunnel and Turnpike Association Webinar Series

October 8, 2014



**The PFM Group**

Public Financial Management, Inc.  
PFM Asset Management LLC  
PFM Advisors

One Keystone Plaza  
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Harrisburg, PA 17101

# Introduction

- PFM welcomes this opportunity to speak with other interested organizations about this significant regulatory change with associated market impact
- The SEC Municipal Advisor Rule categorizes the roles of certain public finance professionals and leads market participants and issuers / borrowers to further establish role clarity in transactions
- Many practical aspects of the MA Rule are not yet fully developed and subject to further guidance and regulatory proposals by regulators including both the SEC and MSRB

# Regulatory Context

*Why should you pay attention?*

# A Few Key Elements of Consideration

## Key Elements to Consider:

- How does the Rule affect Issuers, Underwriters and Municipal Advisors?
- What is the regulatory context for Issuers and Municipal Advisors?
- What actions can an Issuer consider in response to the MA Rule?
- What are the benefits of the Municipal Advisor Rule for Issuers?
- What standards apply to Municipal Advisors?

## Questions and Answers

- How to go about difficult task of separating the known rules from the interpretative guidance and educated speculation?

# Regulations on Municipal Advisors -- SEC



In September 2013, the SEC promulgated a final registration rule (SEC Final Rule) on municipal advisors. Among other things, it:

- Defined categories of persons considered MAs
- Established a permanent MA registration regime
- Established recordkeeping requirements for MAs
- Examination of municipal advisory firms would be conducted by SEC and FINRA

❖ MA Rule became Effective on July 1, 2014

# Background

- SEC Municipal Advisor Rule
  - Definitions
  - Advice Standard
  - Exclusions
  - Exemptions

# Municipal Advisor Definition

- “Municipal Advisor” defined to include
  - a person (who is not a municipal entity or an employee of a municipal entity)
  - who provides **advice** to a municipal entity or obligated person
  - with respect to **municipal financial products** or the **issuance of municipal securities**
- SEC Rules provide that “advice excludes . . . the provision of general information that does not involve a recommendation regarding issuance of municipal securities or municipal financial products.”

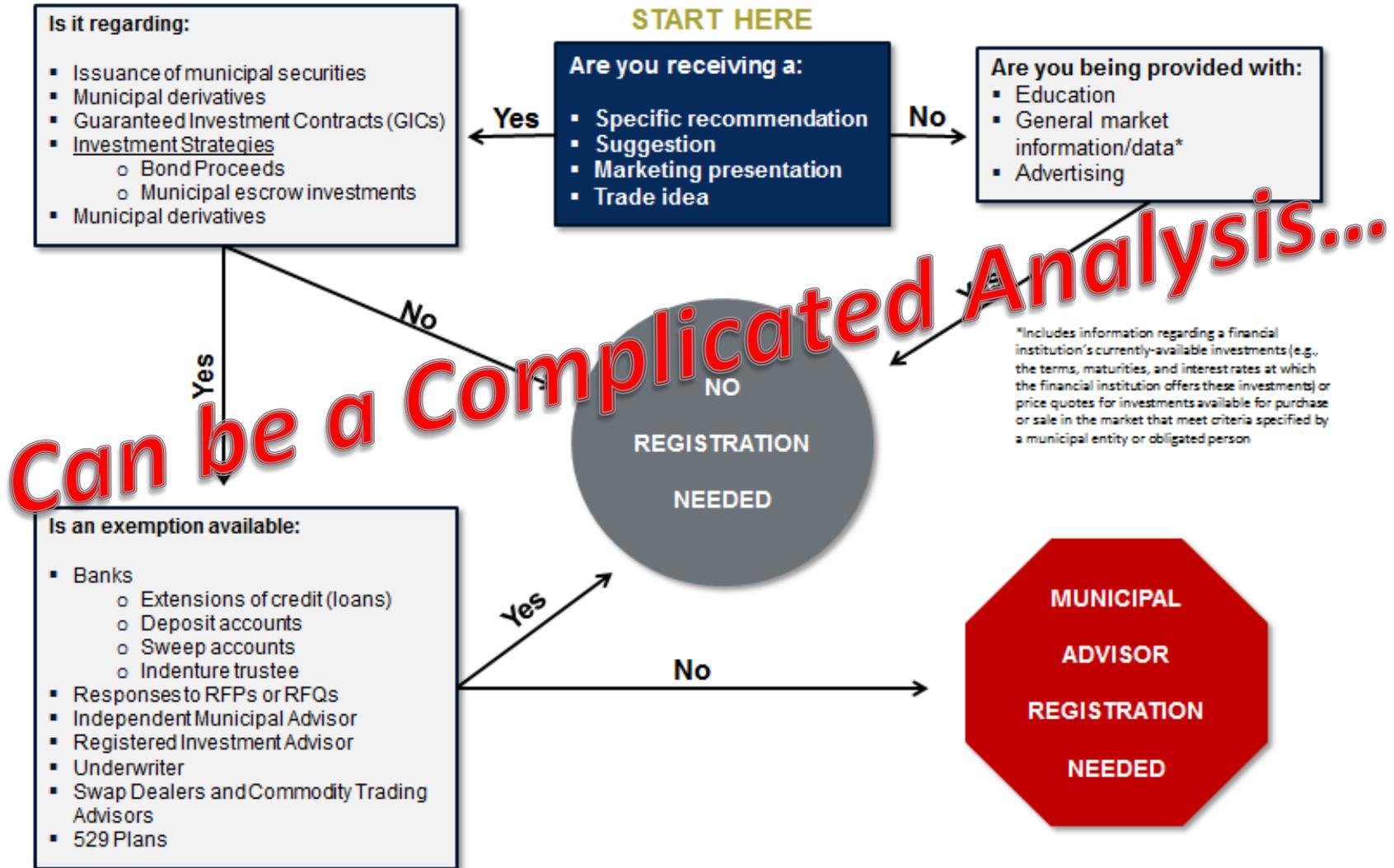
# What are implications of being a Municipal Advisor?

- Required to register with the SEC and the MSRB
- Statutory Fiduciary Duty
  - For municipal entity clients, not obligated person clients
- Subject to MSRB rules (e.g., record-keeping, professional qualifications)
  - MSRB G-42 as proposed would have prohibited a municipal advisor and its affiliates from doing principal trades if municipal entity or obligated person were the counterparty

# How Not to be Municipal Advisor

- Don't meet the statutory definition
  - Not providing “advice”
  - Not either bond proceeds or municipal escrow investments
  - You are a “municipal entity” or “an employee of a municipal entity”
- Meet one of the Statutory Exclusions
- Meet one of the Exemptions established by SEC Rules

# Are you being provided advice that requires registration?



# The Role of the Municipal Advisor – MSRB Perspective

**The MSRB has begun to author and publish draft rule proposals covering the following areas:**

- Standards of Conduct and Duties for MAs (G-42)
- Supervision and Compliance Obligations for MAs (G-44)
- Professional Qualifications Program for MAs (G-3 amendments)
- Gifts and Gratuities
- Political Contributions
- Duties of Solicitors

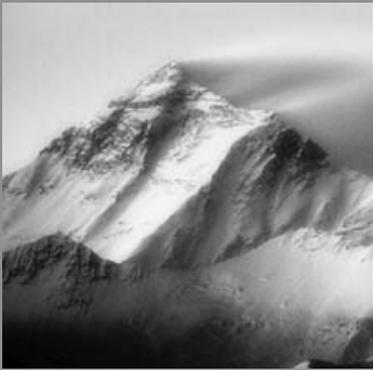


***Early Impressions –***

**Practical implications of the MA Rule**

# What are some practical implications of MA Rule?

- ❖ Regulatory bodies, industry participants, and Issuers / Borrowers need to concentrate on:
  - Clear transaction roles
  - Transparency of interests
  - Formality of relationships
- ❖ MAs must continually focus on the best interests of clients, acting as a fiduciary.
- ❖ Underwriters and municipal marketplace service providers must either register and act as an MA or navigate carefully around the boundaries for advice and services provided to clients



# SEC MA Rule and the MCDC Initiative

Presentation to:

**International Bridge, Tunnel and Turnpike Association**

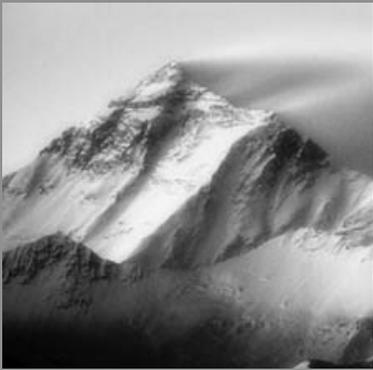
Prepared by:

Rebecca Lawrence

Associate General Counsel,

Piper Jaffray & Co.

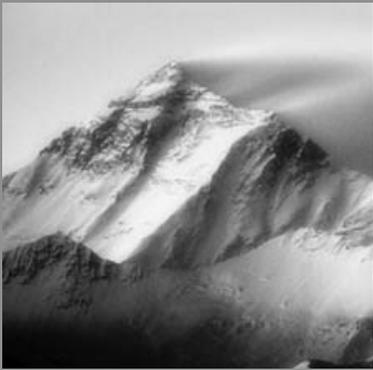
October 8, 2014



## SEC MA Rule

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- **Under the SEC’s municipal advisor rule, if “Advice” is given to a municipal entity respecting the issuance of municipal securities or municipal financial products, that person can become a municipal advisor to a municipal entity with respect to that advice. Becoming a municipal advisor means the underwriter cannot underwrite or sell securities to that municipal entity in connection with that advice.**
- **Advice generally means a recommendation but also includes information tailored to an issuer’s specific circumstances.**
- **Some types of communications are still permissible to underwriters because they are not advice within the meaning of the rule. Examples include:**
  - **Indications of hypothetical new issue pricing ranges based on the issuer’s credit rating, location and market sector and a debt service payment schedule for new money bonds, if not further particularized to the municipal entity.**
  - **Mathematical calculations of possible interest rate savings if the municipality were to issue refunding bonds to refund its outstanding municipal securities, based on the structure of the existing bonds.**
  - **Examples of underwritings performed for other clients.**

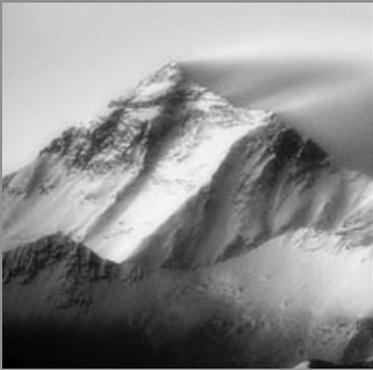


## SEC MA Rule

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- **Information (including terms, maturities and rates) respecting a broker's inventory or price quotes for securities available for purchase or sale in the market place that meet the criteria specified by a municipal entity.**
- **Current market prices and yields of an issuer's particular outstanding bonds.**

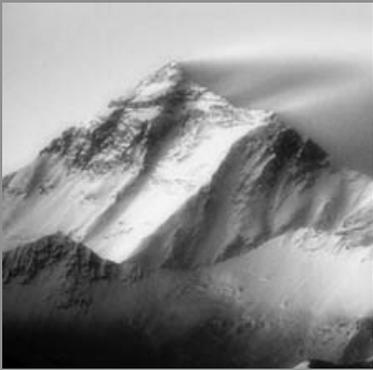
Source: Frequently Asked Questions ("FAQs") and related responses at  
[http://www.sec.gov/info/  
municipal/mun-advisors-faqs.shtml](http://www.sec.gov/info/municipal/mun-advisors-faqs.shtml)



## SEC MA Rule

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- **Underwriters cannot give advice without triggering a potential ban on underwriting a transaction or selling securities related to that advice, so they need to seek an exception to allow them to give advice without being deemed a municipal advisor.**
- **The SEC has recognized 3 exceptions.**
  - ✓ **Underwriter exemption – Advice given after an underwriter is “engaged” by the issuer as an underwriter on a specific transaction.**
  - ✓ **RFP Exemption – Advice given in response to a qualifying RFP.**
  - ✓ **Independent financial advisor exemption – Advice given if the municipal entity has an independent registered municipal advisor. The issuer must make a representation to the underwriter or broker respecting reliance on that IRMA**

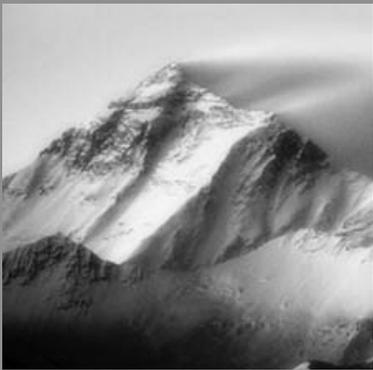


# SEC MA Rule

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## How Is the Rule Working?

- **Underwriters Have Adapted**
- **The rule has flexibility:**
  - **Issuers may still choose a firm to act as both municipal advisor and as an underwriter on separate transactions for that entity.**
  - **Issuers have 3 options for receiving ideas and information about the issuance of municipal securities or municipal financial products from underwriters.**
  - **Issuers may continue to receive certain more limited information without restrictions placed on underwriters.**
  - **Issuers can use website postings through an RFP or IRMA letter to continue to receive access to ideas from underwriters.**
  - **The use of a municipal advisor is still optional, although underwriters are more restricted in terms of non-transaction related services provided outside of the context of an underwriting.**
  - **Exceptions are issuer-driven.**



# MCDC Initiative

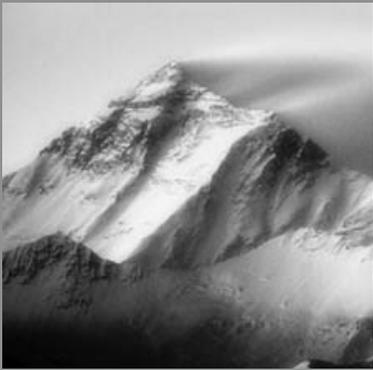
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## What Is It?

- This is an SEC created self-reporting program that allows issuers and underwriters to seek pre-determined settlement terms related to inaccurate or misleading disclosures in official statements relating to an issuer's continuing disclosure compliance.
- September 9<sup>th</sup> was the deadline for reporting for underwriters. Issuers have until December 1 to elect to enter the program.

## How Did Underwriters Respond?

- Underwriters had very little time to perform a difficult analysis on the continuing disclosure history and statements made in offering documents for 5 years for each separate issuer respecting all their outstanding CDA's.
- Underwriters had to make materiality determinations without SEC guidance.
- The data available to make materiality decisions was unreliable or unobtainable.
- Because of these factors, underwriter reports should not be expected to be consistent from firm to firm.
- The SEC reported very high levels of participation by underwriters.



# MCDC Initiative

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## Suggestions

- Issuers should contact their underwriters and confirm whether they have included any of the issuer's deals on their reports.
- If an underwriter has reported you, you need to be informed as to the facts surrounding your transactions so that you are prepared to report or deal with the SEC later.
- Filings were supposed to have been filed to EMMA after July, 2009. However, many were not. You will have very limited access to the pre-EMMA NRMSRs. Disclosure USA and Bloomberg are the only pre-EMMA NRMSRs with data available. Even if you have access, each of these had problems.
- You may have internal records that demonstrate that you did file the reports on time. Check for all possible records that evidence that these filings were made. Check the records of your dissemination agents and financial advisors, if others did filings for you.
- Verify whether you made the information available in a timely fashion on your website, or through an OS posting for a subsequent offering.
- If you decide to self-report, or if you think the underwriter should not report, contact your underwriter and discuss the facts with them. The reports filed by underwriters may be amendable.
- An SEC enforcement proceeding is a serious and stressful event. The MCDC Initiative gives issuers a way to avoid this. While not every breach is material, give careful consideration to any decision not to report if you have facts that are problematic.

# SEC MA Rule and MCDC Discussion

INTERNATIONAL BRIDGE, TUNNEL AND TURNPIKE ASSOCIATION WEBINAR SERIES

October 8, 2014

Presented by:

William C. Rhodes, Public Finance Department Chair, Ballard Spahr

## MCDC Initiative – Historical CDA Compliance

A study released in 2011 by DPC Data Inc. found that for fiscal years 2005-2009:

- “For any of the five years, at least a third of the expected disclosures were never filed in the designated official repositories. In 2008 and 2009, the nondisclosure behavior rose to 36 percent and 40 percent, respectively.
- For the period of study, 56 percent of issuers/obligors did not file annual disclosures for one or more years; 19 percent did not file for any of those years.”

# MCDC Initiative – Historical CDA Compliance

## SEC 2012 Report on the Muni Market:

- Continuing disclosure practices are an ongoing “area of concern”
- Cites GASB timeliness study
  - Studies three-year period from 2006 to 2008 and found that although 73% of the largest governments issued their audited financials within six months, only 46% of smaller governments issued their audited financials within such timeframe.
- Cites NASACT submission data
  - Shows 50-state average of time to complete a CAFR: 204 days for FY 2006, 205 days for FY 2007, 204 days for FY 2008, 206 days for FY 2009, and 188 days for FY 2010
- Cites 2011 Meritt Report
  - Analysis of approximately 25,500 audits covering approximately 6,600 issuers over a four year period found that the average time for an audit report to be completed after the close of the fiscal year is nearly five months

## MCDC Initiative – What Is It?

On March 10, 2014, the SEC's Enforcement Division introduced an initiative to encourage self-reporting:

- By municipal securities issuers, obligated persons, and underwriters of possible securities law violations
- Related to misrepresentations in offering documents concerning an issuer's prior compliance with its continuing disclosure obligations

The Municipalities Continuing Disclosure Cooperation Initiative (MCDC Initiative) is the latest SEC effort in a long campaign to require timely, accurate, and uniform secondary market information from municipal securities issuers

- Past efforts include indirect regulation through municipal securities underwriters, press campaigns, seeking additional regulatory authority from Congress, increased market transparency, and enforcement actions

## MCDC Initiative – What Is It?

Before 2013, despite reports of widespread issuer noncompliance with at least some continuing disclosure obligations, the SEC had not brought a related enforcement action against an issuer or emphasized SEC Rule 15c2-12 in its enforcement actions against underwriters

## **THE TOWER AMENDMENT**

### **Section 15B(d)(1) of the Exchange Act**

Neither the Commission nor the Board is authorized under this title, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities.

## MCDC Initiative – Statutory Authority

- Section 10(b) of the Securities Exchange Act of 1934
  - Rule 10b-5: Employment of Manipulative and Deceptive Practices
- Section 17(a) of the Securities Act of 1933

## MCDC Initiative – History

### *West Clark Community Schools, July 2013*

- First action charging a municipal issuer with falsely claiming in a bond offering's official statement that it was fully compliant with continuing disclosure obligations and an underwriter for not doing the necessary due diligence
- In an official statement prepared in 2007 for a bond offering on behalf, the school district stated that it was in compliance with its disclosure obligations related to prior bond offerings
- However, West Clark had not submitted any of the required annual reports or notices for a 2005 bond offering
- Underwriter, did not conduct adequate due diligence to detect the false statement in the course of the 2007 offering

## MCDC Initiative – Would Self-Reporting Trigger?

Under the Municipalities Continuing Disclosure Cooperation Initiative (MCDC Initiative), the Enforcement Division will recommend “favorable settlement terms” upon self-reporting of such possible violations

For eligible self-reporters, the Enforcement Division will recommend:

- Settlement through cease-and-desist proceedings that do not require an admission of liability
- Not levying a financial penalty against issuers
- Tiered financial penalties against underwriters
  - Penalties will range from \$20,000 to \$500,000, depending on the size and number of offerings reported
  - The 2013 revenue of the underwriter determines the maximum penalty

## MCDC Initiative – What Is It?

Issuers' recommended remedial actions will likely include:

- Establishing compliance policies and procedures
- Complying with prior and existing continuing disclosure obligations
- Cooperating with subsequent SEC investigations
- Disclosing the terms of the settlement in its official statement for five years
- Providing a compliance certificate to the SEC regarding the above actions one year from the date on which the cease-and-desist proceeding is instituted

## MCDC Initiative – What Is It?

Underwriters' recommended remedial actions will likely include:

- Retaining an independent consultant to undertake a compliance review and provide recommendations regarding the underwriter's due diligence process and procedures
- Implementing the consultant's recommendations
- Cooperating with subsequent SEC investigations
- Providing a compliance certificate to the SEC regarding the above actions one year from the date on which the cease-and-desist proceeding is instituted

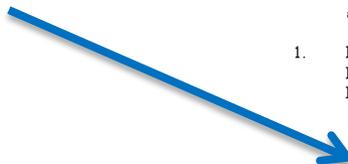
# MCDC Initiative – What Is It?



## U.S. SECURITIES AND EXCHANGE COMMISSION DIVISION OF ENFORCEMENT

### MUNICIPALITIES CONTINUING DISCLOSURE COOPERATION INITIATIVE QUESTIONNAIRE FOR SELF-REPORTING ENTITIES

Contact Info.



NOTE: The information being requested in this Questionnaire is subject to the Commission's routine uses. A list of those uses is contained in [SEC Form 1662](#), which also contains other important information.

1. Please provide the official name of the entity that is self-reporting ("Self-Reporting Entity") pursuant to the MCDC Initiative along with contact information for the Self-Reporting Entity:

Individual Contact Name:   
Individual Contact Title:   
Individual Contact telephone:   
Individual Contact Fax number:   
Individual Contact email address:

Full Legal Name of Self-Reporting Entity:   
Mailing Address (number and street):   
Mailing Address (city):   
Mailing Address (state):   
Mailing Address (zip):

2. Please identify the municipal bond offering(s) (including name of Issuer and/or Obligor, date of offering and CUSIP number) with Official Statements that may contain a materially inaccurate certification on compliance regarding prior continuing disclosure obligations (for each additional offering, attach an additional sheet or separate schedule):

State:   
Full Name of Issuing Entity:   
Full Legal Name of Obligor (if any):   
Full Name of Security Issue:   
Initial Principal Amount of Bond Issuance:   
Date of Offering:   
Date of final Official Statement (format MMDDYYYY):   
Nine Character CUSIP number of last maturity:

Issue Info.



# MCDC Initiative – What Is It?

Transaction  
Participants

Role

3. Please describe the role of the Self-Reporting Entity in connection with the municipal bond offerings identified in Item 2 above (select Issuer, Obligor or Underwriter):

- Issuer
- Obligor
- Underwriter

4. Please identify the lead underwriter, municipal advisor, bond counsel, underwriter's counsel and disclosure counsel, if any, and the primary contact person at each entity, for each offering identified in Item 2 above (attach additional sheets if necessary):

Senior Managing Underwriting Firm: \_\_\_\_\_

Primary Individual Contact at Underwriter: \_\_\_\_\_

Financial Advisor: \_\_\_\_\_

Primary Individual Contact at Financial Advisor: \_\_\_\_\_

Bond Counsel Firm: \_\_\_\_\_

Primary Individual Contact at Bond Counsel: \_\_\_\_\_

Law Firm Serving as Underwriter's Counsel: \_\_\_\_\_

Primary Individual Contact at Underwriter's Counsel: \_\_\_\_\_

Law Firm Serving as Disclosure Counsel: \_\_\_\_\_

Primary Individual Contact at Disclosure Counsel: \_\_\_\_\_

5. Please include any facts that the Self-Reporting Entity would like to provide to assist the staff of the Division of Enforcement in understanding the circumstances that may have led to the potentially inaccurate statements (attach additional sheets if necessary):

\_\_\_\_\_

Facts

# MCDC Initiative – What Is It?

## Certification

On behalf of [Name of Self-Reporting Entity] \_\_\_\_\_,  
I hereby certify that the Self-Reporting Entity intends to consent to the applicable  
settlement terms under the MCDC Initiative.

By: \_\_\_\_\_

Name of Duly Authorized Signer: \_\_\_\_\_

Title: \_\_\_\_\_

## MCDC Initiative – What Is It?

Individuals **may not** self-report through the MCDC Initiative

The SEC's Enforcement Division will determine whether municipal officials and underwriting firm employees should be the subject of an SEC enforcement action on a **case-by-case** basis, considering such factors as the individual's level of intent and cooperation with the SEC

The Enforcement Division indicates that the remedies it seeks will be more severe for eligible issuers and underwriters who fail to self-report through the MCDC Initiative

The Division states that it will likely recommend financial penalties for such non-reporting issuers and financial penalties higher than those set forth in the MCDC Initiative for such non-reporting underwriters

## MCDC Initiative – What Is It?

**The deadlines for voluntary self-reporting ended on September 10, 2014 for underwriters and ends December 1, 2014 for issuers and borrowers.**

# MCDC Initiative – Penalties

## Penalties: Administrative Proceedings

- Cease-and-desist order
- Monetary Fines

## Penalties: Civil Actions

- Injunctions
- Monetary Fines

## Demanding Admissions: Post-Financial Crisis Overhaul of SEC Enforcement

*“We are going to in certain cases be seeking admissions . . . . Public accountability can be quite important, and if you don't get them, you litigate them. What kinds of cases are those? To some degree it turns on how much harm has been done to investors, how egregious the fraud is.”*

*-SEC Chair Mary Jo White  
June 23, 2013*

## MCDC Initiative – Pursuing Individuals

“Individuals tempted to commit wrongdoing must understand that they risk it all if they do not play by the rules. When people fear for their own reputations, careers or pocketbooks, they tend to stay in line.”

*-SEC Chair Mary Jo White  
September 26, 2013*

## MCDC Initiative – History

How has the SEC gone about the enforcement business in the past?

- Seminal enforcement Action in 1996 was Orange County, CA  
*Takeaway:* Governing body is responsible for the review and approval of the offering document
- Additional enforcement actions including Maricopa County, Arizona; Allegheny Health, Educational and Research Foundation; City of Miami (Version 1); and Massachusetts Turnpike Authority.

## MCDC Initiative – History

*City of San Diego*, November 14, 2006:

- \$260 million in bond offerings in 2002 and 2003
- City was facing a looming financial crisis, resulting from
  - intentional underfunding of its pension plan for 5 years
  - retroactive increases in pension benefits
  - use of surplus earnings to pay additional benefits to plan beneficiaries
- City failed to disclose these problems in its bond offerings
- In 2008, the SEC charged five former San Diego officials with securities fraud based upon the inadequate disclosures

## MCDC Initiative – History

*City of Harrisburg, May 2013*

- First SEC action against a municipality based upon statements made publicly as opposed to in the securities disclosure documents
- City was charged with misleading investors about its financial health in the annual State of the City address, as well as in financial and budget reports
- During a time in which the City failed to comply with its continuing disclosure obligations
  - “Total mix” of information analysis
  - As no information on EMMA, investors looked to other sources

## MCDC Initiative – History

- No public officials were named in the action, but, according to the SEC’s press release announcing the action, the case should “emphasize to public officials who wish to avoid personal liability under federal securities laws that they should take steps to reduce the risk of misleading investors.”
- Commissioner Daniel Gallagher recently cited to Harrisburg as an action in which individuals should have been held responsible, stating to The Bond Buyer that “[m]unicipalities don’t commit frauds, people do”

## MCDC Initiative – History

*In the Matter of the Greater Wenatchee Regional Events Center Public Facilities District, November 2013*

- Issuer charged with negligently misleading investors in a bond offering that financed the construction of a regional events center and ice hockey arena
- According to SEC, Official Statement:
  - Failed to warn investors that the District's obligation to pay off the BANs could be constrained by the City's debt limit
  - Wrongly stated there had been no independent reviews of the financial projections for the events center
  - Failed to inform investors that the Mayor and the senior staffer had influenced the financial projections, rendering them unduly optimistic

## MCDC Initiative – What it Does Not Cover

### Covers Only CDA Noncompliance

- Other Misrepresentations Not Covered
- Individuals Not Covered
- Officials of Issuers, and Underwriter Employees and Supervisors Not Covered
- Individuals Must Be Identified

Referrals to Other Agencies (FINRA, DOJ, state regulators) May Occur

# MCDC Initiative – The Collateral Consequences of Self-Reporting

## Self-reports May Be Viewed As Admissions

- May Not Be Withdrawn if Settlement Negotiations Are Not Favorable
- May Serve as the Basis for Bondholders Suits
- May Serve as the Basis for Other Regulatory Action

## Invites Scrutiny of Other Disclosures

- May Result from Enforcement Actions against Individual Officials, Underwriter Employees

## Conflicts

# MCDC Initiative – Whether To Self-Report: Materiality

## The Well-Established Standards:

- To violate Rule 10b–5, a statement or omission must be “misleading as to a material fact.”
- For the purposes of Rule 10b-5, a fact is material “if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.”
- Omitted information is considered material if there is a “substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.”

## MCDC Initiative – Whether To Self-Report: Materiality

- The SEC has provided little guidance on the types of misstatements it considers material under federal securities law
- On July 8, 2014, the SEC issued its first cease-and-desist order under its MCDC Initiative against Kings Canyon Joint Unified School District of California
  - The SEC’s order related to a statement by the District in 2010 that it had not failed to comply in all material respects with its continuing disclosure agreements in the previous five years
  - According to the SEC, the District failed to provide “some” of the disclosure between 2008 and 2009 required by continuing disclosure agreements
  - The SEC provided no further details on the underlying facts

## Is Any Misstatement a Material Statement?

- The SEC considers compliance history of an issuer under its continuing disclosure undertaking to be material to investors.

*“There is a substantial likelihood that a reasonable investor determining whether to purchase the municipal securities would attach importance to the School District’s failure to comply with its prior continuing disclosure undertakings.”* – West Clark proceeding

- According to the SEC in both *West Clark* and *Kings Canyon* proceedings, the statement is important to enable the evaluation of the continuing disclosure undertaking for the bonds being offered by the Official Statement and, in particular, the likelihood of future compliance.

# Potential Considerations in Determining Materiality

Using this principle of assessing the reliability of the disclosure representations, relevant factors in determining materiality could include:

- Importance of the information or notice to be provided
- Extent to which the information was otherwise public
- Whether the information was available to institutional investors and rating agencies upon request, such that the information may have been taken into account in any pricing or rating of the bonds
- Whether a misstatement related to an unreported failure to provide notice of one or more rating changes of monoline bond insurers from the period 2008-2009
- Whether the failures occurred prior to the date of the initial launch of EMMA (July 1, 2009)
- Length of any delay in filing a report or notice
- Reason for the failure to file
- Extent to which there is a significant pattern of noncompliance or an isolated incident

# Potential Considerations in Determining Materiality

- Did the issuer disclosed several events while failing to disclose a single similar event
- Length of time after the end of the fiscal year an annual report was undertaken to be filed
- Whether the primary failures occurred early in the five-year reporting period and the issuer has been fully compliant since
- Whether municipal securities for comparable credits were sold disclosing comparable non-compliance, and any evidence of whether market acceptance or pricing was impacted
- Subsequent to the reporting failures, whether the issuer engaged an independent dissemination agent
- Whether the failures were the result of a single employee who has either been replaced or properly trained
- Whether the issuer has adopted continuing disclosure procedures and conducted associated training, such that past results are not indicative of future performance

## MCDC Initiative – Next Steps

- Whether you are going to report or not, first conduct an internal audit
- If you do find a misrepresentation, consult with counsel to determine materiality
- If there is a potential material misrepresentation, analyze possible consequences of self-reporting
- If applicable, it may be possible to submit a questionnaire and have your counsel enter into discussions with the SEC to follow up

## Further Information

For any questions or further information, please feel free to contact William C. Rhodes at:

William C. Rhodes, Esquire  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103-7599  
T: 215.864.8534  
F: 215.864.8999  
E: [rhodes@ballardspahr.com](mailto:rhodes@ballardspahr.com)



**Digital Assurance Certification LLC**

390 North Orange Avenue, Suite 1750  
Orlando, FL 32801-1674  
www.dacbond.com  
Phone: 407.515.1100

August 18, 2014

**REPORT ON AGREED-UPON PROCEDURES FOR  
E-470 PUBLIC HIGHWAY AUTHORITY**

E-470 Public Highway Authority  
22470 East 6<sup>th</sup> Parkway  
Aurora, CO 80018

Dear Sirs:

Pursuant to the Risk Assessment/Compliance Review Engagement Letter for the E-470 Public Highway Authority dated July 23, 2014 (“Engagement Letter”), Digital Assurance Certification, L.L.C. (“DAC”), an independent accounting firm with offices in Orlando, Florida, has agreed to perform certain “agreed-upon procedures,” as more fully described in the Engagement Letter, to assist E-470 Public Highway Authority (“Issuer”) in determining whether the Issuer (a) should consider “self-reporting” under the MCDC Initiative, and (b) has compliance issues during the CRS Review Period which should be remedied.

All terms not otherwise defined in this report shall have the meaning set forth in the Engagement Letter.

In accordance with the requirements of AICPA AT Section 201, “Agreed-Upon Procedures Engagements,” DAC hereby states as follows:

1. DAC is an independent accounting firm.
2. The Issuer is the only specified party,” as such term is defined in AT paragraph 201.04, and use of this report is restricted to the Issuer.
3. The subject matter of this report is to assist the Issuer and its counsel in determining whether the Issuer (a) should consider “self-reporting” under the MCDC Initiative, and (b) has compliance issues during the CRS Review Period which should be remedied.
4. The members of the Issuer’s finance office are the “responsible parties, as such term is defined in AICPA AT paragraph 101.11, and the subject matter is their responsibility.
5. The subject matter is the responsibility of the responsible parties.
6. The procedures performed were those agreed to by the specified party.
7. This report was conducted in accordance with attestation standards established by the AICPA.
8. Although DAC and the Issuer have agreed upon the procedures to be performed, the sufficiency of the procedures undertaken is solely the responsibility of the Issuer.



Consequently, DAC makes no representation regarding the sufficiency of the procedures described in the Engagement Letter either for the purpose for which this report has been requested or for any other purpose.

9. Accompanying this report are the results of our findings:

Tab 1: Engagement Letter

Tab 2: Spreadsheet showing the results of the Risk Assessment Review prepared by DAC for the Issuer.

Tab 3: MCDC Initiative Review Terms of Use

Tab 4: Information set forth under the "Findings" tab in the Compliance Review Toolkit prepared by DAC for the Issuer.

Tab 5: Information set forth under the "Exception Report" tab in the Compliance Review Toolkit prepared by DAC for the Issuer.

Tab 6: Compliance Review Services Terms of Use.

Tab 7: The list of bonds reviewed by DAC during the course of its Compliance Review, as set forth under the "Overview" tab in the Compliance Review Toolkit prepared by DAC for the Issuer.

This list shown under Tab 7 should be compared by the Issuer carefully with its bonds, as it was prepared by DAC based on the bonds supplied to DAC by the Issuer (and included in the Engagement Letter), but which DAC may have revised based on additional findings.

A narrative summary of DAC's findings as of the date of our review of August 7, 2014 is below.

*At the request of E-470 Public Highway Authority ("Authority"), Digital Assurance Certification, LLC has prepared a "Compliance Report" dated August 7, 2014 ("Review Date") based on filings made at the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system between August 7, 2009 and the Review Date (the "Review Period"). The below summary of certain of the findings set forth in the Compliance Report should be read and used only with reference to the entire Compliance Report, including the "Terms of Use" acknowledged by the user in order to access the Compliance Report. In addition, these findings do not constitute "advice" within the meaning of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), and DAC is not providing any advice or recommendation to the Authority or anyone on the Authority's behalf regarding the "issuance of municipal securities" or any "municipal financial product" as defined in the Act.*

I. LATE OR MISSING AUDITED FINANCIAL STATEMENTS

None.

II. LATE, MISSING OR NON-COMPLIANT ANNUAL REPORTS

1. Late Filings

None.



2. Missing or Non-Compliant Filings

A. The FY 2011 Operating Data did not include a table entitled, "All Highway Expansion Fees Received by the Authority." This table was subsequently provided by a filing made on July 26, 2013.

III. EVENT NOTICES

1. "Rating Change" events.

Other than those "Rating Change" events shown under the heading, "Event Notices" under the "Findings" tab, DAC was unable to find any other "Rating Change" events which occurred during the Review Period.

2. With respect to redemption and defeasance notice events shown under the heading, "Event Notices" under the "Findings" tab, DAC is unable to determine whether all such notices were posted on EMMA during the Review Period, and suggests that the trustee or escrow agent for the refunded bonds be contacted for verification.

3. No determination as to timeliness or as to materiality as to "Event Notices" filed during the Review Period has been made.

In addition, the Issuer also has been given access rights to DAC's online system to review these findings.

DAC was not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the accompanying spreadsheet and information set forth in Tabs 2, 4 and 5 described above. Accordingly, DAC does not express an opinion. Had DAC performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Issuer and its counsel and is not intended to be used and should not be used by anyone other than these specified parties.

**Digital Assurance Certification, L.L.C.**

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Arapahoe County  
Aurora, CO  
Brighton, CO  
Commerce City, CO  
Douglas County  
Parker, CO  
Thornton, CO

July 2, 2014

E-470 Public Highway Authority  
22470 East 6<sup>th</sup> Parkway, Suite 100  
Aurora, CO 80018

Re: E-470 Public Highway Authority's Independent Registered Municipal Advisor

By publicly posting the following written disclosure, E-470 Public Highway Authority (the "Authority") intends that market participants receive and use it for purposes of the independent registered municipal advisor exemption to the SEC Municipal Advisor Rule.

E-470 Public Highway Authority (the "Authority") has retained an independent registered municipal advisor. The Authority is represented by and will rely on its municipal advisor, Piper Jaffray & Co., to provide advice on proposals from financial services firms concerning the issuance of municipal securities and municipal financial products (including investments of bond proceeds, escrow investments, and interest rate swap transactions). This certificate may be relied upon until December 31, 2014. Proposals may be addressed to Authority and sent to Stan Koniz, Director of Finance. If the proposal received will be seriously considered by the Authority, the Authority will share the document with its municipal advisor. Please note, that aside from regulatory mandated correspondence between an underwriter and municipal advisor, the underwriter should not speak directly with or send documents directly to the municipal advisor unless specifically directed to by the entity.

The individuals listed below are on our retained team at Piper Jaffray & Co. We will update this disclosure with notice of any changes to this team going forward, so you can verify your continuing independence from Piper Jaffray.

- P. Jonathan Heroux, Managing Director
- Michael Lund, Senior Vice President
- Nathan Deweerdt, Associate
- Thomas LaFleur, Managing Director (Swap Advisory Services)

  
Stan Koniz  
Director of Finance  
E-470 Public Highway Authority