

THE BOND BUYER

Thursday, October 13, 2016 | as of 5:41 PM ET

Municipal Advisor and Issuer Needs Post MCDC

By [Gregg Bienstock](#)
October 12, 2016

The SEC's Municipalities Continuing Disclosure Cooperation initiative is causing many municipal issuers and underwriters to change the way they do things. Underwriters are scrutinizing issuer disclosures, and the representations made about those disclosures, for accuracy and clarity. To date 71 issuers have entered into cease and desist orders with the SEC and must update past delinquent disclosure filings and improve their processes to ensure timely and complete disclosure going forward. These realities, and the introduction of the Municipal Securities Rulemaking Board Rule G-42, provide municipal advisors with an opportunity to support their Issuer clients in meeting these requirements and the demands of the market.

Issuer Needs Post MCDC

The cease and desist orders issued by the SEC are likely to serve as a roadmap for all issuers. These orders require issuers to (amongst other things):

- Comply with existing continuing disclosure undertakings, including updating past delinquent filings within 180 days.
- Establish continuing disclosure obligation policies and procedures, and periodic training, within 180 days.
- Provide the SEC with a compliance certification.
- Disclose the terms of the settlement in any official statement for five years.

New Issues

Issuers coming to market need to ensure that their past filings conform to what they represented they would make publicly available and provide underwriters comfort that the issuer has a sound process in place to make timely and complete disclosure prospectively. It is best to begin this analysis when a deal is in its formative stages as underwriters will want to know:

- Are the issuer representations in the preliminary official statement and OS accurate?
- Does the underwriter have confidence the issuer will comply with their disclosure requirements going forward?

Check, Correct and Monitor

Outlined below is an approach that will help your Issuer clients address these obligations and support your G-42 obligations:

- Update Past Delinquent Filings:
 - Conduct a 15c2-12 Five-Year Lookback Analysis.
 - Utilize data provided from the analysis to fix late and/or missed filings.
 - Once filed, re-run the analysis to demonstrate/confirm compliance at the Issue and CUSIP level.
- Prospective Compliance — Notification/Monitoring and Periodic Lookback Analyses:
 - Use a notification service to alert the Issuer and/or their Municipal Advisor in advance of ongoing filing obligations such as the Audit and Financial and Operating data. The notification service should clearly identify the timing and due date of the filing, operating and financial data tables required to be filed , and which issues and CUSIPs must be tagged to identify filings
 - Use a monitoring and notification service to identify Rating Changes to support timely filing.
 - Once the filing date has passed, perform a 15c2-12 Lookback/Confirmation report to demonstrate/confirm proper filing.
- Official Statement Notice:
 - Include a statement regarding use of a notification/monitoring service for prospective filing obligations and post-filing reporting to support the issuer's timely filing prospectively.

The regulatory environment has placed new and different burdens on virtually all members of the municipal market. These changes require market participants to address this heightened regulatory and market scrutiny in an efficient and cost-effective manner. As a Municipal Advisor, there is an opportunity to support and serve Issuer clients as they grapple with these new demands. The simple approach outlined above is recommended for those needing to comply with a MCDC Order and for all issuers to ensure their filings are timely and representations on new issues are accurate.

Gregg Bienstock is chief executive officer and co-founder of Lumesis Inc.

