



# ICCCFO Conference-Starved Rock Municipal Securities Regulation Update: Changed Rules of the Road for Public Finance Transactions

Kevin Heid  
Kelly Kost

April 28, 2017  
9:00 – 9:30 AM

STIFEL



# SEC Enforcement Actions—Eye-Opening Facts/Statistics

- Since early 2013 alone, apart from the MCDC Initiative (\$18 million in fines against 72 underwriters), the SEC has brought enforcement actions against 76 state or local government entities (including 4 U.S. states), 13 obligated persons and 16 public officials. In contrast, for the entire 10-year period from 2002 to 2012, there were enforcement actions brought against 6 government entities, 6 obligated persons and 12 public officials.
- Between 2013 and 2016, the SEC levied \$180,000 in civil penalties on eight officials. In contrast, five officials (in only two actions) paid \$85,000—less than half as much—in civil penalties in the 15 years from 1998 through 2012.
- The City of Miami paid \$1 million to settle a securities fraud charge in connection with several outstanding enforcement actions; and its budget director was ordered to pay \$15,000.
- Port Authority of NY/NJ settled SEC charges of inadequate disclosure for \$400,000.
- Federal guilty plea by Executive Director of the Ramapo, NY, Local Development Corporation (Maximum sentence of 20 years – Sentencing September 18, 2017).

# LeeAnn Gaunt – SEC’s Municipal Enforcement Division Head

## Remarks and questions from NABL TSLI meeting (March 9-10, 2017)

1. The SEC “remains interested” in issuer officials and others participating in deals in which there were violations — no longer just cease and desist orders — now monetary penalties on issuers and individuals.
2. Doesn’t matter if there is a bond default – SEC will focus on adequacy of disclosure.
3. Small issuers can’t get by because they are small and unsophisticated; big issuers can’t just rely on a multitude of attorneys, accountants and advisors.
4. Control Person Liability is a strong tool for the SEC. A person is a control person if he exercises control over the entity or has the ability/authority to direct the entity.
5. Ensure that the issuer official who signs the official statement actually reads it. The official is negligent or perhaps even reckless if he doesn’t.
6. There may be enforcement actions for MCDC non-filing entities.

# Primary Market Disclosure—Overview

- The official statement is a document prepared by, or on behalf of, the Issuer in connection with a primary offering of its bonds.
- The official statement discloses all material information on the offering for potential investors.

The official statement is the main source of anti-fraud liability in a municipal transaction

# Primary Market Disclosure—Rules

- Anti-Fraud Provisions
  - '34 Act – Section 10 & Rule 10b-5; '33 Act - Section 17(a)
  - Prohibits fraud in the offer or sale of securities
  - Unlawful to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading
- SEC Rule 15c2-12
  - Requires underwriters of municipal securities to:
    - Obtain, review and disseminate an official statement
    - Ensure that Issuer has undertaken (contracted) to provide certain continuing disclosures to the market (Continuing Disclosure Undertaking or CDU)

# SEC Municipal Enforcement Actions

## “Firsts” since 2013

- Collected its first civil penalties from Issuers (Wenatchee, Washington)
- Obtained its first emergency court order against an Issuer to halt an offering in progress (Harvey, Illinois)
- Prohibited Issuers from issuing municipal securities in the future without first satisfying specific conditions precedent (Harvey, Illinois)
- Determined “control person” liability for key Issuer officials—mayors—without alleging that the officials acted with fraudulent intent or even with negligence (Allen Park, Michigan)
- Ordered the first bars of municipal officials from participation in future offerings, effectively preventing the officials from exercising significant official responsibilities (or from working with underwriters) (Allen Park, Michigan)

Source: Commentary by Robert Doty in *The Bond Buyer*, July 12, 2016, and SEC Press Releases.

# SEC Municipal Enforcement Actions

## More “Firsts” since 2013

- Ordered an Issuer official to pay a civil penalty and barred the official from future bond offerings, although the official was alleged only to have been negligent due to a failure to read an official statement he signed (UNO Charter Schools)
- Took its first action against a municipality for violations in public statements by the mayor—political speech—appearing together with annual financial reports on the Issuer’s website; in other words, held an Issuer liable for information provided outside of official statements or continuing disclosure documents filed with the MSRB (Allen Park, Michigan)
- Took action against a municipality in connection with tax certifications to bond counsel and a pooled bond Issuer (*i.e.*, documents that investors never saw nor could be expected reasonably to see) (Harrisburg, Pennsylvania)
- Received the benefit of District and Appellate Court decisions that a municipal official is not entitled in securities law enforcement proceedings to qualified immunity in the performance of discretionary official duties (Miami, Florida)

Source: Commentary by Robert Doty in *The Bond Buyer*, July 12, 2016, and SEC Press Releases.

# SEC Municipal Enforcement Actions

## More “Firsts” since 2013

- Took its first action, based upon information relating to a private conduit borrower, against a governmental Issuer providing credit enhancement for the borrower’s payment obligations (Rhode Island Economic Development Corp.)
- Ordered an Issuer to employ an independent monitor to review transactions for conflicts of interest (UNO Charter Schools)
- Took its first action against local Issuer counsel (Westlands Water District)
- Took an action in coordination with a Department of Justice criminal action in a municipal disclosure case pursuant to an announced policy of cooperation (Ramapo, New York); one guilty plea so far
- First federal jury trial by the SEC against a municipality or one of its officers for violations of the federal securities laws (Miami, Florida); jury found City and its budget director guilty of defrauding investors

Source: Commentary by Robert Doty in *The Bond Buyer*, July 12, 2016, and SEC Press Releases.

# SEC Municipal Enforcement Actions

## More “Firsts” since 2013

- \$1 million settlement against a city that already is subject to a cease-and-desist order from a prior enforcement action (Miami, Florida)
- Port Authority of NY/NJ: First municipal issuer to admit wrongdoing in an SEC enforcement action (\$400,000 settlement)

Source: Commentary by Robert Doty in *The Bond Buyer*, July 12, 2016, and SEC Press Releases.

# General Principles Re: Disclosure

- All participants in the disclosure process should be encouraged to raise additional potential disclosure items at all times in the process
- Disclosure questions should be discussed with appropriate management team members
- The process of revising and updating disclosure should not be viewed as a mechanical insertion of more current numbers. While it is not anticipated that there necessarily will be major changes in the form and content of the disclosure at the time of each update, everyone involved in the process should consider the need for revisions in the form and content of the sections for which they are responsible at the time of each update.
- While care should be taken not to shortcut or eliminate any steps outlined in Disclosure Policies and Procedures on an *ad hoc* basis, the review and maintenance of the disclosure is a fluid process and recommendations for improvement in Disclosure Policies and Procedures should be solicited and regularly considered

# Questions?

STIFEL

CHAPMAN  
AND CUTLER  
LLP

# Contact Information

## Stifel Nicolaus

Anne Noble  
Managing Director  
800-230-5151 x8488  
noblea@stifel.com

Kevin Heid  
Managing Director  
855-273-2579  
heidk@stifel.com

Sean McCarthy  
Director  
800-230-5151 x2737  
mccarthys@stifel.com

Tom Crabtree  
Director  
800-230-5151 x8457  
crabtree@stifel.com

Jim Burgett  
Vice President  
618-830-9782  
burgettj@stifel.com

## Chapman and Cutler

Kelly Kost  
312-845-3875  
kost@chapman.com

# Important Disclosures

Stifel, Nicolaus & Company, Incorporated (“Stifel”) has prepared the attached materials. Such material consists of factual or general information (as defined in the SEC’s Municipal Advisor Rule). Stifel is not hereby providing a municipal entity or obligated person with any advice or making any recommendation as to action concerning the structure, timing or terms of any issuance of municipal securities or municipal financial products. To the extent that Stifel provides any alternatives, options, calculations or examples in the attached information, such information is not intended to express any view that the municipal entity or obligated person could achieve particular results in any municipal securities transaction, and those alternatives, options, calculations or examples do not constitute a recommendation that any municipal issuer or obligated person should effect any municipal securities transaction. Stifel is acting in its own interests, is not acting as your municipal advisor and does not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934, as amended, to the municipal entity or obligated party with respect to the information and materials contained in this communication.

Stifel is providing information and is declaring to the proposed municipal issuer and any obligated person that it has done so within the regulatory framework of MSRB Rule G-23 as an underwriter (by definition also including the role of placement agent) and not as a financial advisor, as defined therein, with respect to the referenced proposed issuance of municipal securities. The primary role of Stifel, as an underwriter, is to purchase securities for resale to investors in an arm’s- length commercial transaction. Serving in the role of underwriter, Stifel has financial and other interests that differ from those of the issuer. The issuer should consult with its’ own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate.

These materials have been prepared by Stifel for the client or potential client to whom such materials are directly addressed and delivered for discussion purposes only. All terms and conditions are subject to further discussion and negotiation. Stifel does not express any view as to whether financing options presented in these materials are achievable or will be available at the time of any contemplated transaction. These materials do not constitute an offer or solicitation to sell or purchase any securities and are not a commitment by Stifel to provide or arrange any financing for any transaction or to purchase any security in connection therewith and may not be relied upon as an indication that such an offer will be provided in the future. Where indicated, this presentation may contain information derived from sources other than Stifel. While we believe such information to be accurate and complete, Stifel does not guarantee the accuracy of this information. This material is based on information currently available to Stifel or its sources and is subject to change without notice. Stifel does not provide accounting, tax or legal advice; however, you should be aware that any proposed indicative transaction could have accounting, tax, legal or other implications that should be discussed with your advisors and /or counsel as you deem appropriate.

---

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

© 2017 Chapman and Cutler LLP