CDIAC Webinar Transcript
Securities and Exchange Commission (SEC) Municipalities Continuing Disclosure Cooperation Initiative, Part 2: Issuer Considerations and Actions
June 2, 2014

(Editor's Note: This transcript has been prepared by California Debt and Investment Advisory Commission (CDIAC) and it believes it to be a fair and accurate reproduction of the comments of the speakers. Any errors are those of CDIAC and not the speakers.)

On April 28, 2014, the California Debt and Investment Advisory Commission broadcast a webinar highlighting the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"). This initiative allows underwriters and issuers to self-report no later than September 10, 2014, material inaccuracies in a final official statement regarding prior compliance with continuing disclosure obligations under Rule 15c2-12. To take advantage of this program, issuers will have to undertake a rigorous analysis of their exposure, as well as fully consider the consequences of self-reporting or not reporting. This follow-up webinar will consider some of the key steps that issuers should initiate now and the decision points that issuers should recognize in their deliberations.

Slide 1 – SEC Municipalities Continuing Disclosure Cooperation Initiative Part 2: Issuer Considerations and Actions.

Mark Campbell: Good morning everyone, this is Mark Campbell, the Executive Director of the California Debt and Investment Advisory Commission. I want to thank you for joining the second seminar addressing the SEC Municipalities Continuing Disclosure Cooperation Initiative. Today's program focuses we hope, on questions issuers are asking themselves or their counsels. So we have a panel of four bond counsel to focus, drill down on questions that we have composed structuring this webinar.

I want to run down a couple of housekeeping items. First of all, the presentations slides are available on the CDIAC website. If you look at the screen you will see the URL for that connection. Captioning is provided during the program. Participants may click on the link in the chat section at the bottom of the control panel to access remote captioning. To submit questions during the course of the webinar, go to the GoToWebinar control panel, send us any comments or questions that you might have during the course of the webinar, and we will try to address them on a flow basis.

Lastly, all attendees will receive automatically by e-mail, a certificate of attendance. For the attorneys seeking MCLE credit, however there is a different process. You will have to e-mail CDIAC directly at cdiac_edcuation@treasurer.ca.gov, and we will complete that process for you.

So without further introduction on the topics, since I am hoping that all of you that are listening are quite familiar with it, I am going to introduce the panel and then step aside.

Slide 2 - SEC Municipalities Continuing Disclosure Cooperation Initiative Part 2: A Call to All Municipal Issuers. (1:56)

Facilitating today will be Dan Deaton, partner with Nixon Peabody. He represents governmental agencies, non-profit corporations, underwriters and others as bond counsel, disclosure counsel and underwriter counsel in a variety of tax exempt and taxable public finance transactions.

With him is Kevin Civale, shareholder with Stradling Yocca Carlson and Rauth. He served as bond counsel for more than twenty-five years representing large municipalities and other public sector clients in a variety of financing and contract negotiations. He has particular expertise in disclosure and represents as I said, a number of cities, counties and special districts in the State of California.

Scott Ferguson, shareholder with Jones Hall, joined the firm in 1999 and has specific experience as bond counsel, disclosure counsel, and underwriter counsel on a variety of financings. He represents cities, counties, school districts and special districts. His practice focuses on disclosure counsel work, land-secured financing, and utility revenue financing.

And lastly, Elaine Greenberg, partner with Orrick, Herrington, and Sutcliffe. She is a member of the firm's security litigation and regulatory enforcement group. Her practice focuses on securities and regulatory investigations, and enforcement actions, securities litigation, public finance, and white collar and corporate investigation. She has more than 25 years of securities law experience, and having served as a senior officer in the SEC's Enforcement Division, she has deep institutionalized knowledge of the SEC's policies, practices and procedures.

So with that, I will turn it over to Dan. Thank you for being part of the discussion today, all of you.

Dan Deaton: Thank you Mark. And just by way of background, just wanted to make sure that we just did a quick review of the MCDC Initiative. On March 10th, the SEC announced that it was offering to both issuers and underwriters favorable settlement terms if they self-report by midnight, eastern time on September 10th, instances in which there where federal antifraud violations in connection with the misstatements or omissions to make materially correct statements in connection with their continuing disclosure filings.

We have, previously on April the 28th there was a previous webinar with Peter Chan of the Enforcement Division of the SEC, who is the person who is sort of the author or the architect of the MCDC Initiative, that lays out the whats, whys, whens, where and all the different aspects of the MCDC Initiative. I would encourage people who are not familiar with the details of the MCDC Initiative to both look up the information the SEC's put out which is on the e-mail about this webinar, as well as listening to the first part of this on April the 28th because it gives a lot of background.

The purpose of today's webinar is to go to the next step. To go beyond sort of the basics of what is the MCDC Initiative, and why the SEC is doing it. And to ask the questions, the practical questions, the "how to" questions that issuers are asking themselves or should be asking themselves, and to get peoples' input, to get input of this panel of Scott, Elaine and Kevin as to their thoughts as to what issuers should be considering.

What we are going to do is we're going to go through a series of different questions, and we are going to lead out with a different person every time who has given some thought to that question. But we're going to try to get everybody's take, all three – Scott, Kevin and Elaine's ideas about these things and then we will move on to the next question.

Slide 3 – Question 1: What type of investigation into its past continuing disclosure compliance would you advise issuers and obligors to conduct, and who would be involved in any such investigations? (6:07)

So with that, the first question, which I will first direct to Scott and then ask Kevin and Elaine to address, is Scott, given this MCDC Initiative, what kind of investigation should issuers be making, or would you advise issuers or obligors to be making, in their past continuing disclosure compliance, and who do you think should be involved in that investigation into that process?

Scott Ferguson: Thank you Dan. This is a question - the answer is going to depend of course on the circumstances of the individual issuer. An infrequent issuer will have a much different and hopefully simpler process of evaluation than an issuer who's in the market all of the time. I guess the first thing for everyone to bear in mind is that the focus of the SEC's initiative isn't whether an issuer has been compliant with continuing disclosure obligations, it's whether there has been a materially inaccurate statement in an official statement over the past five years about that issuers prior continuing disclosure compliance. And this, of course, goes to the fact that the SEC doesn't have direct jurisdiction over municipalities. Its jurisdiction here is kind of rooted in the general antifraud statutes that govern what's in a POS (Preliminary Official Statement).

So the first step is, I would say to look at the number of - whether you have issued bonds over the past five years, and then what was the disclosure about prior continuing disclosure compliance, and then from there, look at what your track record is, whether you made all of the filings and made them on time and you made all of the material event notices, et cetera.
We have advised clients if you've got a small number of issues, and the adequate staffing, this can obviously be done internally. You've got a lot of issues outstanding, a lot of continuing disclosure obligations, it probably makes sense to engage a firm, and there is a handful of firms

out there who are now starting to specialize in continuing disclosure and clients reviews, which involve, primarily going to the EMMA website to see what's been filed and then compare it to what was required to be filed under the various continuing disclosure undertakings. Again, this is going to be a pretty big job depending on the number of issues that are outstanding.

One quick note, there has been a lot of questions over well how far back we need to look? I think everybody's understanding at this point is that since there is a five-year statute of limitation on SEC enforcement actions, you look at official statements that were issued over the last five years and whether that means five years from today, five years from September, it's kind of a judgment call. And then each official statement needs to have reported material failures to comply five years prior to that. So kind of the outside look, if you go back five years, say to an issue five years ago that was supposed to capture any failures to file five years prior, so that's a ten-year look back. So everybody's kind of talking about that, a ten year look back for compliance.

Dan Deaton: Okay, very helpful. Kevin, what are your thoughts on this question?

Kevin Civale: Yeah, I think just a couple of specific things: The level, the particular level of review that a given issuer should do depends probably in part on the issuer's sort of impression of how they've been doing. Some issuers have been, were very far out ahead of the curve on this and they devoted significant resources to it. And if that's the case and if you feel you've been on top of the continuing material events filings, and if you dutifully file, if you're aware of your high level of compliance, perhaps you don't need to go into one of these forensic reviews that have lately have become almost the norm.

The second thing, if you've done a transaction within the last, let's say, year or so when there's really been a tremendous focus on this, or even going back a few years after the SEC and MSRB pronouncements on this topic two-three years ago, many transactions there have been very detailed and I'll use the word "forensic" reviews have been done. So if that's been done with respect to one of your transactions recently, and it turns out that no material items had shown up, I don't know if it's necessary to sort of reinvent the wheel.

And the third point is if you've been outsourcing that might help guide you to determine what the level of review is. You know, outsourcing doesn't mean you necessarily cannot do anything about it. But again, it's whether you need to sort of engage the scope of the engagement and whether or not you need to gain an outside party. You might think about those factors that I just mentioned.

Dan Deaton: Okay, and that's very helpful, and Elaine, what are your thoughts on the issue? But also I think, along the lines of Kevin's question - where Kevin was going. I think Scott has laid out a sort of – I think Kevin's word "forensic" is a good word in the sense of this sort of process of going through where there was an offering and going back and looking at the past filings, and doing that with respect to every credit that's out there. In addition to your thoughts of what the scope of that should be, any thoughts as to when maybe it is, that somebody as Kevin was saying, doesn't need to do that?

Elaine Greenberg: Well, clearly if there hasn't been any bond issued in the past five years, so there's no OS (official statements) out there, then you would not have to basically do anything, because, just to reiterate, the basis of a possible SEC enforcement action here would be material misstatements that are contained in official statements. So if you didn't issue bonds over the past five years, such that there would not be any relevant document that the SEC would be looking at to base its enforcement action, keeping in mind that it doesn't have jurisdiction and can't bring an action against an issuer just for noncompliance with its continuing disclosure obligations, the SEC cannot sue the issuer for 15 C-2-12 violations for example. So if that is the scenario that you are in, then arguably you do not really have to do any sort of look back or review.

Notwithstanding that, given the SEC's focus in this area, I do think it would be a good idea at this time to look back and see if you have been meeting your continuing disclosure obligations. And if you haven't, maybe you should think about correcting them at this point, even though, the SEC would not have a basis for bringing an action against you because you have not issued any bond within the last five years.

Slide 4 – Question 2: If an issuer or obligor uncovers an instance of noncompliance, how would you recommend that an issuer or obligor go about figuring out or determining if it is material?

(13:54)

Dan Deaton: Okay, let's move on to the second question here, and this question has become sort of the great metaphysical question of (*laughing*) our lifetime apparently. Kevin is going to be first up on this one. So if an issuer or obligor does go through the process of looking at its filings for the last however many years as Scott laid out, and uncovers an instance in which they in fact were not in compliance with their continuing disclosure undertaking, Kevin, how does an issuer or obligor go about figuring out or determining if that noncompliance was material?

Kevin Civale: Well, the sort of general rules of materiality are legal in nature so you should be talking to your lawyers for sure. I think at the end of that analysis there probably is a risk assessment that has to be undertaken. Just by way of background, so when an issuer puts out an official statement, they have to make sure there aren't any material omissions or material misstatements. And material, there are a lot of ways to define it. But one sort of generally accepted definition is whether or not there is a substantial likelihood that a reasonable investor would consider the information important in deciding whether or not to invest. And when you determine materiality, you determine it in the context of the totality of the official statement and the mix of information that's presented. So when issuers put together official statements, and they have lawyers in the room with them and bankers and FA's (Financial Advisor), people make many dozens and dozens and dozens of materiality decisions and often times, they are easy to make. It is very obvious if something is material, or it's very obvious if something is not material.

So switching to the context of continuing disclosure, what we're seeing and what we're hearing a lot is people have issues when they do these forensic reviews, the things that pop up, there's a whole category that tends to, I don't know what percentage I would ascribe to it – seventy or eighty percent, things like downgrades and enhancers in 2009 and 2010. You know the Moody's recalibration in 2010. A situation where an issuer dutifully prepared its annual report, but the link to the report wasn't correctly done on EMMA to a specific CUSIP. Issues where continuing disclosure agreement required that ten tables be updated (I am making numbers up), and only nine were updated. Or, in the last sort of general category its delays in filings that range from a couple of days to a couple of weeks.

So if you have a situation where an issuer has very dutifully, for instance in 2011, 2012, 2013 and 2014, made all of their filings in a very conscientious way, you know you could make a reasonable argument that some of these things that I mentioned were not material using the traditional indicia of materiality, and the traditional analysis that working groups go through when they determine whether or not to put something in an OS. I think the concern here is that there is sort of a different rule applied, maybe applied to the area of misstatements or omissions in continuing disclosure. And the SEC, on the previous webinar that CDIAC held, would not concede that any of these sort of things, what one might argue would be a "foot fault," is immaterial.

So, I think you just have to discuss it. I would suggest that nobody make any decisions quickly. Let this play out and don't make a filing until it gets close to the time when it's actually due. You know, the SEC has very clearly said that they don't intend to provide any guidance. But it would just seem to me that in this context when you have a very unusual proceeding that they are going through, and in the good faith that it would be, they'd sort of take a lot of the anger out of the room by indicating that some of these things that there's been widespread issues with, are not the types of things they are looking for.

Dan Deaton: Okay, thanks Kevin. And Elaine, do you have thoughts on this question as well? I think there are really two questions that can be asked here: One is, what is a material violation? I think that at the end of the day, as Kevin mentioned, we've gotten to the point where we really don't know. There is not going to be any sort of clear standards that are communicated about that. So that leaves almost a process question for the issuers and obligors to ask from a process perspective, how do you, how would you, if you were an issuer or obligor, how would you advise an issuer or obligor to go about tackling the question of materiality, given the fact that there isn't these sort of clear standards out there? And I think as Kevin pointed out, given the fact that it does seem as though there might be, lurking in the background here, a second definition of materiality that's confusing matters, as well. How would you recommend issuers and obligors go about the process?

Elaine Greenberg: Right. So, I mean given this wide spectrum of materiality, from the situation where, for example, you haven't filed an annual financial statement, that would be probably the most extreme and most clearly material violation, to a situation where maybe there's a couple of missed CUSIPs, to a rating downgrade of an insured during the height of the financial crisis, so how do you get a handle on all of these various instances?

What I would recommend would be to categorize the situations and put them into various buckets from most material to less so, and see at the end of the day if you do the review and the look back, how many instances do you have in say, the most material versus not so material? And you can come up with different categories. Or you can have most material, "did not file annual financial statement," and then going down the road, "did file it, but 100 days late." The next bucket, "did file it 30 days late." And you can see, and you can come up with these logical buckets of materiality going across the spectrum and see what you are left with.

My recommendation would be that if you have a situation where you have at least one instance in what can arguably be the most material or very highly material category that you believe would probably warrant a self-report, and then you look down the spectrum of materiality and you have other situations which maybe in a vacuum would not necessarily warrant a self-report, a couple of missed CUSIPS for example, then I think you make a decision if I'm going to self-report, at least one instance, of what is arguably highly material misrepresentation.

Does it then make sense to include the other ones that may be arguably less material, and argue to the SEC in the questionnaire that you have included these other instances, although you don't believe that they're material, and then give the reasons why you don't believe that they're material? So from a process perspective, I think it makes since to sort of categorize all of the instances the best you can, and put them into different buckets from most material to less so.

Dan Deaton: Okay and Scott what are your thoughts on this?

Scott Ferguson: I like Elaine's approach of first of all, identifying failures and lapses and categorizing them, and I would just note that the questionnaire does have in the last, the last point, "please include any facts that the entity would like to provide to assist the staff of circumstances that may have led to an inaccurate statement." That's kind of opening the door to, as Elaine suggested, going ahead and reporting failures that may or may not be material, but that the judgment calls are too hard to make and that you explain that we're including this, but we don't think it is material and here is why. It occurs to me that at some level, there may be a certain desire to over-report or report more than might be – might otherwise be reported, both because you are permitted to give your explanation, and at some level I think that some issuers might conclude that it is better not to second guess what the SEC might say when it comes out in the wash, and just report everything.

Kevin Civale: It is probably worth mentioning just on the questionnaire point, if I understand it correctly, that by signing the questionnaire, even if you make an argument that something is not material, you sort of leave it to the Commission to decide. You don't sort of preserve the right to disagree, by the way that the questionnaire is worded, you sort of agree to sign the order. If I understand it right.

Dan Deaton: That's right. Yeah, and as Peter covered in part one (Peter Chan of the SEC enforcement division, of the MCDC Initiative). One of his observations or points that he insisted on not being a recommendation is that issuers and obligors may submit or self-report and note that they don't believe that something is material. And the enforcement staff expects to sort through some of these and expects to be in a position where on many of these it will conclude that they are not, in fact, material. They require the issuer or obligor to go forward with the agreement. But as Kevin noted, once the issuer or obligor submits the self-reporting form and files under the MCDC Initiative, if the SEC enforcement staff concludes that it was a material misstatement, they must now move forward to the settlement agreement.

Elaine Greenberg: I would just add one thing. Beyond the SEC enforcement staff, there is the Commission itself which will ultimately be the final arbiter of what is material. So even though the SEC staff may put forth a recommendation, make its arguments why certain instances rise to the level of materiality from a legal perspective, the recommendation then has to go up to the Commission itself which then will have a say whether or not it agrees with the SEC staff regarding the materiality analysis. So it is really going to be the Commission itself that will be the final arbiter as to what is material, and if it deems these instances to consist of material misrepresentations and admissions. It's at that point that they would be included in the enforcement action.

Slide 5 – Question 3: If an issuer or obligor finds out that an underwriter is going to self-report with respect to an offering by the issuer or obligor, but the issuer or obligor doesn't believe that the offering document contained a material misstatement or omission, what do you recommend that the issuer or obligor do? (26.35)

Dan Deaton: Good point. Well, moving on to the third question. This is an issue that has risen out of the so called "modified prisoner's dilemma" question that has circulated about the MCDC Initiative, given the fact that the MCDC Initiative provides for both underwriters and issuers to self-report. It has arguably placed, by design, has put issuers and obligors and pitted them against the underwriters. And there has been situations where the underwriters might self-report with respect to certain offerings that issuers and obligors aren't as sure if they would want to self-report.

So starting with Elaine, if an issuer or obligor finds out that an underwriter is going to self-report with respect to an offering, but the issuer or obligor doesn't believe that that offering document contains a material misstatement or omission, what are your thoughts as to what the issuer or obligor should do about that, or how they should approach the problem?

Elaine Greenberg: Right. Well as you said, the SEC MCDC Initiative was created in a way that presents this "modified prisoner's dilemma" because there is only one underlying set of facts: was there material misrepresentation or omission in an OS. And obviously, both the issuer and the underwriter have potential liability for that and can obtain the benefit of the settlement terms if they both self-report within the deadline. However the tension is created because on the underwriter's side, particularly if they have done hundreds, if not thousands of underwritings during the course of this time period. They have the incentive to be more inclusive rather than less because the penalty amount for them is capped at $500,000. So, almost once you reach that cap, in some respect, it doesn't really matter how many additional deals you include in the self-report because you've already reached the maximum penalty.

So obviously this tension is created between the issuers and the underwriters in that regard. And my recommendation would be that the issuers and the underwriters need to be communicating with each other as soon as possible. Do not wait until the eve before self-reporting would be due. As issuers if you are going through your analysis and in fact you believe you only have a couple instances of let's say missed CUSIPs or rating downgrades of insurers, and you already know that right now, maybe it makes sense to contact the underwriters with regard to those particular transactions and begin the dialogue early.

Ask the underwriter what is their intention with regard to reporting those particular instances. They may or may not have gotten to that stage, they may have not come up with what they are going to ultimately do, but at least beginning the dialogue sooner rather than later, I think is something that really should be done. And having a discussion about, look I mean, we understand, as an underwriter you have done many deals, from your perspective, include more rather than less, we understand that, but for us there are only a few of instances here which we do not believe are material. We have been in compliance with everything for all of these years. We really don't want to be the subject of a self-report.

I think if the underwriter, notwithstanding all that, still wants to include those instances in the self-report, I think that in that section in the self-report, in the questionnaire, where it talks about circumstances, perhaps the underwriter can put in all of the arguments why those instances do not rise to a level of materiality, and that they're being reported just sort of to be all inclusive in abundance of caution, just putting everything in there for purposes of the self-report, but yet argue why they are not material. I think at that point the issuer needs to make assessment whether or not they are satisfied with that characterization in the underwriter's self-report, such that they do not feel the need to self-report themselves. But it is going to be a risk analysis.

Again, going back to my earlier comment, looking at the totality of all of your disclosures over the course of five years or more, is this really the only sort of blip that you have or maybe a couple of missed CUSIPs or a couple rating downgrades, such that you could argue, if the SEC would then come in and ask, "Look we've got a self-report from an underwriter; your bonds are included in that. We see we did not get a self-report from you," that you would say, "Yes, you know, these are immaterial situations, in the totality of the circumstances we believe that we have materially complied with our continuing disclosure undertakings."

Dan Deaton: Okay good. Scott, moving on to you, how concerned should an issuer be or obligor be if they don't file and an underwriter does file? What situation would you think that an issuer or obligor would move forward? I think Elaine described a good process of a good dialogue between the issuer and obligor, and then the underwriter on one hand. Is there a point where the issuer or obligor should feel comfortable moving forward without filing if an underwriter has filed?

Scott Ferguson: Well, I think it goes back to that same materiality analysis and the risk analysis that we have been talking about. It comes down to how does the issuer feel about the failures to file that have been identified, and if on balance that they feel there is a good argument that they were not material failures and the failure to disclose them in their OS's was not material, then I think then they can have comfort in not doing a filing. I think Elaine's point is a good one. If your bonds show up on an underwriters filing and you didn't make a self-report yourself, that's going to be a red flag, and that obviously seems to be one of the things that this initiative was designed to do - to highlight differences like that.

I do think as a practical matter, most of the underwriters that we work with, and the underwriters that were left in the business after a lot of the consolidation over the last few years, are having to sift through thousands of issues, and I think just the sheer volume and the practical concerns make it very likely that underwriters are going to report more rather than less. I don't think there is going to be time for the kind materiality analysis that we have been talking about, and that individual issuers probably will be able to make.

So I suspect we are going to see a situation come August where the underwriters are going to make more kitchen sink filings than anything and the issuers are going to be in the position of having to decide, and I don't know if there is going to be time for a lot of dialogue either. I doubt the underwriters are physically capable of having a conversation with the underwriter's clients to decide that this lapse should be on the list and that lapse should not be on the list. I just don't think that, given the short timeframe between now and September 9, that there is going to be time for any kind of meaningful conversations along those lines. I really do think it is going to be the issuers making the determination on their own.

Kevon Civale: I just have two minor things to add, which is on the question of, does the fact that the underwriter is going to make a filing – how does it affect the decision of the issuer? I would think, just sort of common sense, if you felt you were dealing with a close call and you were sort of agonizing a bit over whether or not to make the filing or not, that might suggest you should make it anyway. But if that might affect whether or not you'd make the filing if you thought you were in a gray area or more toward the riskier side of the gray area.

And secondly, I think Scott is exactly right. I think it's just going to get frantic towards the end, and don't expect the underwriters, particularly depending upon where you sit in the scheme of issuers, don't expect the underwriters to be sort of, doing your work communicating that it is not material. So if you want them to communicate an argument that something isn't material and they are filing, I would assume you would need to sort of put that together for them. Now whether or not that will go in or not is another question, but don't assume they will do any kind of detail, because the volume will effectively prevent them.

Dan Deaton: Yeah, and let me go back to Elaine on this real quickly. To a question that has come in from the "magical" chat room. Elaine, what do you think the focus of the SEC is here? Is the focus of the MCDC Initiative really to try to - how intentional is the "modified prisoner's dilemma"? And how much is the SEC really using this whole apparatus to get to the debt issuer? Is the focus of the SEC more directed to the issuer over the underwriter here? Or, what is the SEC think is supposed to be going on with this whole process?

Elaine Greenberg: I think the focus is on both market participants. The reason why it is set up with this prisoner's dilemma I think, is to encourage more from self-reports. So I think that the SEC believes that by creating this tension, the self-reports will contain more information in there. And that in their view, hopefully, this will lead to what I believe they have termed, "a reset of the landscape." And I think that is really the underlying point of all of this.

In the press release accompanying this initiative, the SEC cites the Commission's report on the municipal securities market. One of the main themes of that report was the general lack of transparency in the market and that disclosures to investors need to be improved. So this is one of the SEC's main priorities, examining both the issuers own disclosures as well as the underwriters due diligence practices.

So I think those two priorities are really at play in this initiative, and you know the SEC hopes that through this initiative, it will lead to improvements in disclosure on behalf of municipal securities investors.

Slide 6 – Question 4: If an issuer or obligor is going to self-report, what, if anything, should the issuer or obligor do to address the potential that individuals at the issuer or obligor may have been involved with the reported violations? (39:07)

Dan Deaton: Okay. Moving on to the fourth question. The MCDC Initiative excludes the coverage of individuals. So in other words, if an issuer or obligor self-reports that guarantees favorable settlement terms for the issuer or obligor, but it does not guarantee favorable settlement terms for the individuals at the issuer or obligor that may have participated in any of those potential violations.

So starting with Scott, how should the issuer or the obligor go about managing the question or the potential that some of the individuals may be involved or may have participated in a way that may expose those individuals and won't be covered by the favorable settlement terms?

Scott Ferguson: This is a really difficult question, primarily because Dan as you point out, the settlement, the initiative and the proposed settlement terms don't apply to the individuals and they made it very clear that there can be actions against individuals, both as issuers and underwriters, following the disclosure of the initiative. There is also kind of a conflict between this decision making process that issuers will need to go through over the next couple of months, whether to self-report. The very people that could be taking the lead on making that decision could also be the ones to potentially be exposed to individual liability if the SEC were to choose to do so.

So it seems to me, and I think Dan you and I have talked about this before, or we've talked about this as a group, that part of this initiative is to go after the "bad actors" out there, and I think if we look at the West Clark enforcement action, there was some very egregious failures to file, and it seems the focus there was to find individuals who were most responsible and to bring actions against them. It could be said that part of this initiative is to find again, patterns of real egregious failures to file and use that as way to then target individuals later for enforcement actions.

So, I don't know if there is a good way within the four corners of the initiative to check individuals, but I do think that's a real concern and will continue to be a concern as people work through this.

Dan Deaton: Okay Kevin, do you have some thoughts on that question?

Kevin Civale: Yes, I sort of agree that there is no good answer to this. Clearly what individuals should be most concerned about would be a sort of determination that the failures were either reckless or intentional. That's really the sort of thermonuclear conclusions against individuals that you want to avoid. And I'm sort of two minds about it. Part of me thinks that in connection with the filing, obviously you need to be transparent and you have to be truthful about it, but perhaps the facts can be stated in a way, supportive of the fact that it was merely negligent or it certainly wasn't reckless or intentional. Now litigators might say that's the last thing you want to do is to start to get into those kinds of details because that becomes the record on which this litigation type proceeds.

I think that's my final comment on this. This is certainly, from an individual's perspective a litigation type preceding you are entering into. So if there is a significant concern as you look at the facts that, hey this could be viewed as reckless, or this could be viewed as intentional, you need to get the litigators involved quickly.

Dan Deaton: Yeah, and I think as we mentioned in prior conference calls the importance. There are really sort of two sets of issues that are here: You know, one set of issues that we addressed is not unnecessarily sort of exposing individuals or so on, and I think Peter in part one of the webinar was very clear that from the SEC's perspective, the reason and the purpose for excluding individuals is really reserved for what they consider to be some really bad instances of conduct and being able to have the capacity to manage through the individuals on that level.

But there is a second sort of question here, Elaine, that would be helpful for you to address also. The conflicts of interest that are there and how should an issuer or obligor manage the potential for the conflict of interest that an individual who might be in charge of the process and might actually be involved in the process of making the decisions and sorting through all these various complications questions for the issuer or the obligor, but may thereby actually have these issues for themselves as well, how would you suggest they deal with those issues?

Elaine Greenberg: Sure. Well, as the SEC has indicated with regard to potential actions against individuals, it involves the case by case assessment of the facts and circumstances, including the evidence regarding the level of intent and other factors such as cooperation by the individual. So, with that in mind, we have been talking about does the state of mind of any individuals here entail what would be seen as intentional or reckless conduct? I think clearly that if there is evidence of that, then the SEC would most likely be more interested in pursuing individuals with regard to that, versus not.

However, I wouldn't go so far as to say that there would not be instances where, just on a negligence standard, such as what is being offered here for the self-reporting initiative, the SEC could bring an action against an individual just based upon a negligence standard if they thought that the situation was, nevertheless, notwithstanding maybe the lack of intent or recklessness, that the individual really was so negligent in complying with their responsibilities, with their duties, maybe had a fundamental lack of understanding of what it meant to have compliance with the federal securities law. So I do just want to put that out there, that I think a lot of this has been discussed in the context of really bad actors that would give rise to a scienter-based charge. But you know, I can see a situation where an individual who was merely negligent, could in fact be charged with securities fraud, albeit on a negligence basis.

So going through the other point, which is: corroboration by the individual. If, for example, there is an individual who bears the brunt of responsibility for maybe some of the conduct that occurred during the past five years, you know whether or not it makes sense for that individual to be part of the corroboration effort. This is a cooperation initiative; it does not cover individuals in that they couldn't come forward and fill out one of these forms. Nevertheless, they can come forward in a cooperative mode and that would be something that the SEC would consider in determining or not it felt the need to bring enforcement actions.

In terms of the conflict, this points out the conflict between the institutional entity and the individual. I would say that as issuers are going through their review process, if they become aware of what can be problematic facts or circumstances, where they believe that an individual could have liability here, and that the SEC may want to in fact conduct a further investigation, I think there may need to be a discussion about whether or not to recommend to that individual that he or she obtains separate counsel. So those are going to be obviously difficult decisions, discussions, but you know, this is a litigated context. And given that there are no settlements at the moment on the table in this initiative for individuals, whether or not, you know the individual should have his or her own separate counsel, I think is a decision point for various issuers if they find particularly troubling set of facts.

Slide 7 – Question 5: When do you think that issuers or obligors should consider self-reporting for the MCDC Initiative? (49:17)

Dan Deaton: Okay. Moving on to the next question, question number five. Kevin, this is ultimately the million dollar question. Given the past investigation and all of these different issues that we have been talking about, what is the threshold decision? At what point does an issuer look at the facts and circumstances and say, we think it would be in the best interest for us to go ahead and self-report?

Kevin Civale: To sum it up in a few words, if you have major recent failures with annual reports, there are sort of two categories, although this is sort of an analysis as opposed to what the SEC is saying. I think there is going to be a lot of sensitivity if you fall into the West Clark scenario, which is the school district that put out an official statement that said we have not failed to materially comply, when in reality they hadn't made their annual filing. If you put an OS that said we haven't failed to comply and you hadn't been doing your annual filing, that is a circumstance where you think you really should seriously considering self-reporting.

So we talked earlier in the call about other indicia, if it's a foot fault and four years and 340 days ago you know, that's the other end of the spectrum. I think there is particular sensitivity, at least it would seem to me, on the annual report, although material event reporting is important, I would think there's more room to conclude in a reasonable way that what you did or failed to disclose wasn't material.

Dan Deaton: Okay, very helpful. Elaine any thought on that?

Elaine Greenberg: I think you really need to consider this question with regard to the materiality analysis. You can't have one without the other. And again, looking at the spectrum of materiality as I indicated earlier, if you do this analysis, then you do the buckets or the categories and you do have at least one situation which falls into say bucket number one, which is the most material, not filing an annual report, then I think then it's pretty clear that, you know, counsel would recommend that you would file a self-report. As you go through the lesser material category and it gets grayer and grayer, I think that's where you really need to seriously consider what would be the pros and cons of self-reporting, and you need to also consider what the underwriter is doing.

This question really envelops a lot of the other discussions we've been having thus far. Concluding when you should in fact do the self-report and I would say, and I think that in terms of timing, I think we believe that there is no incentive to do it much earlier than the deadline. I think that leaving room for further discussion and analysis, talking to underwriters if that possible, it's going to take every bit of time from now until midnight September 10, 2014, to have that time to sort through everything. I think it is probably time well spent. And as far as I see it, I see no benefit to rush the self-report much sooner than close to the deadline.

Dan Deaton: Okay, Scott did you have some thoughts on this question?

Scott Ferguson: Yeah, I was just going to add to what Elaine just said, that there is really no reason to rush. I mean, you probably want to do it before midnight on the ninth of September. But a lot of these questions hopefully, are going to sort themselves out. There has also been a suggestion that pressure has been brought on the SEC to extend the deadline. Although I think we have had at least one, if not more than one very definitive statements from, it may have been Peter Chan of the SEC, stating that there is no plan to extend, I would say no reason to rush. But plan to get something if you are going to submit, or at least have the decision in hand by early September.

Dan Deaton: I think it was in GFOA that Peter said that there would not be an extension. I think nobody should have an expectation that there will be some sort of extension at this point. Just laying it out, because I think this is sort of the threshold question. There appears to be sort of three buckets here that we have been talking about. One bucket, I think that combining the different answers, that one bucket is an underwriter is going to self-report, and also there's been a missed annual report, or annual financial statement or some major annual sort of filing that's there. It sounds like we all agree that the issuers and obligors should seriously consider self-reporting and that might be a good sort of measure or trigger that is there of some sort.

And then there is of course, seventy-five different gradations from there to other places. But there is sort of on the other end of the spectrum, a situation where the instances of non-compliance or there are no instances of non-compliance or there are no offerings. And there is a situation where the underwriting is so small, not even the underwriter is going to be self-reporting, or most underwriters are not going to be self-reporting. And at the other end of the spectrum, and at the end of the day, a lot of this is going to fall under the large gray area that is going to sit here and there's going to be situations where the underwriter may self-report, and it maybe of a level of detail or it's a concern that it's not comfortable given the nature of things, and that the issuer or obligor really doesn't believe that it's to be material. And really there is going to be an individual risk or decision on the part of the issuer and obligor, making the best decision that they can. It's really not, in that middle bucket, there aren't really good clear answers for that middle bucket it seems like.

Kevin Civale: I hope that they will reconsider the theory that they are not going to provide additional guidance. Because, whether you like this or not, this initiative, from the SEC's perspective, has been spectacularly successful, in the sense that it has the entire industry, both the issuers, the underwriters, the lawyers, everybody involved, laser focused on the area of continuing disclosure. It is hard to argue that it is not a fair goal for the SEC to have.

But again, I just think there is so much time and money being spent on things, not a broad range of things. I don't think it's fair to ask for sort of, a very broad range of items that they could say no that's not what they are not interested in, if we could just knock out the missed CUSIP or the enhancer downgrade in 2009 and 2010, just a couple of things, I think it would sweep away half of what folks are spending a lot of time talking about. And whether or not it is going to be successful or not, who knows. I really think it would be helpful from both the regulatory perspective and the issuer perspective. It would take a lot of anger out of it because people are spending a lot of time focusing on things that intuitively you look at and think that's not really material, something that happened that long ago.

Slide 8 – Question 6: What is the impact or consequence to an issuer or obligor who self-reports that it is under a cease and desist order going forward? (57:25)

Dan Deaton: So it is 11 o'clock Pacific Time. And we've got about four more questions, and I've got a chat room of questions. So I'm going to go into sort of a different mode here. The next question is question six, which is, you know, what is the sort of, in essence, under the MCDC initiative, the consequences of self-reporting under the MCDC Initiative, is that the issuer or obligor needs to agree to certain undertakings, which essentially is agreeing to policies and procedures for continuing disclosure, compliance, and fixing anything that was there before. As Peter said in part one, things that issuers should be doing in the first instance from his perspective. But the second consequence is that the issuer obligor has agreed to a cease and desist order that would be subject to. I think it would be helpful to ask Elaine this so we can move to the next question.

Elaine, could you just describe for us what is the legal consequence of an issuer/obligor being subject to a cease and desist order? What is it getting itself into? How does its legal risk change by virtue of being subject to a cease and desist order as opposed to being in the absence of a cease and desist order?

Elaine Greenberg: Right, so the cease and desist order is a legal proceeding. And you know, as part of a settlement, it would have to be disclosed going forward for five years in any future OS. In situations where it is a governmental issuer, it would likely have to be discussed at a public hearing, the fact of a cease and desist. It is in fact a legal proceeding, and just going forward what does that mean? There is a forward looking element to it because it is ceasing and desisting from committing current violations, plus any violations in the future. So what does that mean? So suppose a couple of years from now, the issuer fails to file its annual financial statement, or some other problem that is akin to what would be the subject of the cease and desist. What would be the SEC's reaction to that?

Well, one of the possibilities is that the SEC could seek to have the cease and desist order enforced in a federal court action. Keep in mind that is exactly what the SEC is doing currently with respect to its enforcement action against the City of Miami. Years ago the City of Miami was subject to a cease and desist order. Last year the SEC filed a complaint in federal district court. One of the remedies that it is seeking is to enforce the previous SEC cease and desist order. The SEC ratcheting up the forum going into federal court, ratcheting up the remedy of what it is seeking in that instance. So I think that everyone should keep in mind, this is a legal proceeding and it does have some future consequences, so you need to be really careful to make sure that you know once you sign up to this settlement, that you keep in compliance and are really careful not to engage in any future violations because that is the subject of the cease and desist order.

Slide 9 – Question 7: If an issuer or obligor self-reports, how do you recommend that it develops the policies and procedures and other undertakings of the MCDC Initiative?

(1:01:35)

Dan Deaton: Moving on to the next question. Scott, I think you are first up on this one. Which is, if an issuer or obligor does self-report, how do you recommend that he goes about developing the policies and procedures undertaking of the MCDC initiative?

Scott Ferguson: So policies and procedures, I guess the most extensive one I have ever seen came out of the SEC's action against the City of San Diego, and their procedures, I believe, are available on their website. There have been other issuers in California that I'm aware of, some larger issuers I guess, that have since also adopted policies and procedures for disclosure, both initial and continuing disclosure.

I would say San Diego's is probably the most extensive and least practical for a lot of issuers. There are kind of basic steps, basic framework of any policy would include identifying, basically establishing internal controls, systems for review of disclosure documents in a way that ensures that the appropriate internal staff members of the issuer, as well as appropriate consultants, like disclosure counsel, financial advisors etc., are involved in the process to make sure that nothing gets missed and things get adequately disclosed and filed on time. So identifying what is a disclosure document, obviously an official statement, continuing disclosure filings. Also an audit. Audits have been the focus of a couple of recent SEC actions, and it is clear. So, basically anything reasonably anticipated to get to an investor should be considered a disclosure document.

And then identify the kind of internal team of staff and officers of the issuer. Who should be responsible? Whoever the chief financial officer is and the general counsel, those are the two obvious ones. But depending on the type of debt, it might be someone with the public works function or maybe the city manager or a general manager, again depending on the circumstances. And then define a process for review and drafting, and that can involve circulating documents amongst the identified people on your team, and having one or more meetings. And then the last piece is periodic training for the governing body and for staff about disclosure issues.

So anyway, that's kind of a thumbnail of the disclosure policies that I have seen. Like I said, there are examples out there. And we've recommended and we are going to continue to recommend, probably more strongly, that whether or not an issuer decides to comply and submit a self-report under the initiative, that adopting disclosure policies is a good idea. It's a way to create a good record. I wouldn't tell anyone it is going to inoculate you against SEC actions, but it provides a good record that you are trying to put policies and procedures in place to ensure that you don't have, or at least try and ensure that you don't have, disclosure issues going forward.

Dan Deaton: Kevin, do you have some thoughts on this?

Kevin Civale: The next question sort of hits the same topic, but I think Scott covered it pretty well on that question.

Dan Deaton: Okay. And Elaine, how do you think the SEC internally looks at the question of policies and procedures? Do they have some high points and some basic issues that they are looking for?

Elaine Greenberg: I don't think it can be understated the significance and importance of issuers or any other market participants having robust policies and procedures in place. That is one of the key things that the SEC does look at when it is conducting its investigations because these are fact finding investigations. The SEC is interested to learn how this happens, or what is the process by which disclosure was or was not made, or was there material misrepresentations or admissions. So, it wants to know, what were the processes in place? Were there sufficient policies and procedures? If there were sufficient policies that's one thing, but is it a policy that was just drafted and stuck up on a shelf getting dust? That no one was really implementing them or no one really knew what to do with them, such that the policy itself was really ineffective and the practice was not really being implemented effectively?

And then, in terms of everyone knowing what their role was on the team. Who was responsible for what and having clarity in the entity as to, there's no question that it's so-and-so's responsibility, and to identify those individuals not by name, but by title. Because over time, obviously those individuals will change. So it is important that the title, if it's the Director of Finance, what is that individual responsible for? What is the CFO responsible for? So it's very clear that if someone comes into that role going forward that they know exactly what their responsibilities are, and to have training periodically to make sure that people are well trained and there is no question, there is no pointing fingers, everyone knows who is responsible for what. That is of critical importance for the SEC. If you look at many of the SEC orders going back over the past year or so, there is a discussion, and they are most likely about policies and procedures, or lack thereof. So that is a big deal for the SEC.

So to be proactive now, to guard against future scrutiny with regard to continuing disclosure, or just general disclosure, whatever your obligations are under the federal securities laws, make sure you have robust policies and procedures that are effective, are in place, and that people are well trained with regard to them.

Slide 10 – Question 8 & 9 combined: Given what we have learned about the MCDC Initiative, what do you recommend that issuers or obligors do differently about continuing disclosure going forward? (1:08:31)

Dan Deaton: Okay, what I want to do is combine sort of the eighth and ninth questions that we have, into one basic question which is: Given what we have seen from the MCDC Initiative, whether an issuer or obligor reports or doesn't report, just as sort of a lesson learned question, starting with Elaine, well I guess we have Kevin and Elaine, I don't know, I'm combining two questions, and my whole process is being thrown into complete chaos here. But let's start with Kevin I guess. How should issuers or obligors go about continuing disclosure, and then disclosing their continuing disclosure differently - I mean what have we learned in the marketplace about this topic? Kevin, do you want to take a chance at that?

Kevin Civale: Yes sure, and just sort of continuing on the last question, which I was thinking about. I think that's exactly right, designate the official. One practical thing that I have seen issuers do is to tie the continuing disclosure into sort of an accounting function. And I have seen many issuers, and it seems to me to be successful, actually have a tab in their CAFR (Comprehensive Annual Financial Report). That's sort of the last tab, and it's not necessarily the subject of the outside orders report, but a tab that required disclosures or bond disclosures. Because my impression is that the accounting side of the house in the municipalities are tied into this concept since they have to prepare the annual financial reports, they are sort of tied into the concept that each year annually this thing has to be done at a certain time, and I have seen that to be very effective.

For ratings I would suggest people think hard about outsourcing that. It is my understanding for fairly modest fees, you can have a third party, you give them your CUSIPs and they will dutifully notify you, basically and instantaneously when your rating changes, and even file the report for you. So, these rating changes, that might be something to think about outsourcing.

Continuing disclosure compliance going forward, I think people are obviously focusing - I think there is a little bit of an overreaction now. You see a lot of official statements, I think because of the uncertainty that we have been talking about throughout this call about what is material or not, there is a lot of, frankly, minutiae being described in official statements, and I don't really think that's necessary. And I would suggest being very careful, that except under the most egregious terms, don't concede any material in an official statement, that any particular filing was a material failure. So in other words there are two different decisions: You might describe a failure to file, but you don't necessarily have to concede it was a material failure in the OS.

Dan Deaton: Thank you Kevin. Elaine do you have thoughts on this combo question, and sort of what have we learned and how do we do these things differently moving forward?

Elaine Greenberg: Yes, I mean just to follow up on disclosure in the OS. I agree, avoid using any sort of legal terminology such as materiality. Better just to state the facts because it preserves arguments down the road, you know, whether or not something was in fact material, because you can voluntarily disclose more than what is required, so better just to state the facts without characterizing it as material. Also, be very careful in what you say in your OS, and always keep in mind what exactly are your obligations in your continuing disclosure agreement. You really need to read those carefully, and to understand what exactly is required, when it is required and before you even put anything down on paper in the OS section regarding continuing disclosure, you really need to have the CDA in front of you. You can't come up with any disclosure in the OS without having what the requirements of the CDA are. It can vary obviously. So know what your CDA says backwards and forwards, and be very, very careful how you disclose your compliance in the OS.

Dan Deaton: Okay. And Scott do you have any thoughts on this question?

Scott Ferguson: I like the idea of appointing a single staff person by title, as Elaine mentioned who is responsible for particularly, the annually continuing disclosure filings going forward. I would add to that, I think appointing an active dissemination agent, one who is involved in either helping create the annual reporting or is scrupulous about sending reminders and particulars, and also getting it filed and providing evidence that it has been filed with EMMA. I think that can be very important as a way - both appointing the single staff person and hiring a good dissemination agent, those are both ways to kind of bridge the gap when you've got staff turnovers and you get these gaps in institutional knowledge, which often times I think can be the cause of gaps and lapses in things like continuing disclosure.

The other thing, along those lines, is we have seen this POS (preliminary official statement) disclosure of prior compliance. We've seen this push to professionalize the review. A lot of underwriters have asked for that. I can foresee a situation where we see more and more of that, and there becomes more of a niche for firms providing this service. It's been suggested that we may end up in a place where the continuing disclosure review gets attached to an OS as an exhibit; just the way a market observation study or appraisal does now. Just as a separately prepared report done by a professional. I'm not sure if that would be good or bad, but I can see a push for that at some point down the road if we continue the way we're going.

Kevin Civale: That makes sense.

Dan Deaton: Yes, I think the biggest lesson learned is that the MCDC Initiative is an unprecedented initiative that I think Elaine, if I listened to you correctly, never in the history of the SEC has something like this been done.

Elaine Greenberg: Yes, that's correct.

Dan Deaton: This is from the SEC's prospective under the category of rare and unusual. I think it just highlights the severity with which the Commission itself, as well as the Enforcement Division, sees these issues and is very serious about these questions. I think that, as Peter Chan mentioned at GFOA, the sense of breaking an Eco chamber. There is definitely a sense of culture change the SEC is trying to effect with this. It is really important to try and get to the subtext of all of this. In addition to dealing with all of the specifics of the MCDC Initiative, get the larger subtext of what the SEC is trying to communicate to the market and stick with it. And I think this is what all this goes to.

Slide 11 – Questions (1:16:29)

Alright, let me go through a few questions here real quickly that I have gotten through the chat room.

Given the experience of all of the three of you guys, going back to the first question, what are issuers doing to test/determine compliance? Would you suggest that they look at the OS and just EMMA, and the question really is do you think issuers and obligors should somehow test what was there before EMMA? And that would take us back to the dark ages of the municipal market, the NRMSIRS period in which issuers and obligors, and lawyers and a lot of other people did not have good access to the NRMSIRS. Should issuer's being going back before EMMA? And if so how do you recommend that they go through that? I want to start with Scott. Scott, do you want to take a shot at that question?

Scott Ferguson: Sure. So the pre-EMMA age is a little bit of a black box. I think disclosure U.S.A. was in effect for I guess that fifth year looking back. The problem with disclosure U.S.A is it provides evidence if something was filed, but not what that something was. So you can't peer below. You can peer down to the next layer to see, oh okay, a report was filed but what did it contain and did it comply with the requirement of the continuing disclosure undertaking? I have talked to people who have told me it is very difficult to figure out what exactly was filed. The different NRMSIRS really were a scattered shot approach, and a lot of stuff was difficult to access even when properly filed. So I think maybe making good faith efforts to do everything you can to determine it, and you know if people have their own receipts and their own records of what was filed, that's obviously a very good fact. But, I think making the best effort in good faith to track down the filings is probably the best you can hope for, for those early years.

Dan Deaton: Okay, let me go to the next question, and I'll ask this for Kevin. If an issuer finds that an underwriter is doing review of compliance for past filings, what extent can the issuer or obligor rely on that review by the underwriter, or should it do its own review of past compliance in any event?

Kevin Civale: That's a good question. If it is a situation where for instance, the underwriter and I'm making this up, of course - if the situations where the underwriter has engaged a third party, and there is a report that exist, and it is a reputable third party, and the underwriter is willing to share that report with the issuer, and the report is consistent with the issuer's own knowledge of its own filing history, that would seem to me to be a pretty reasonable approach to confirming prior compliance. I think that might be unrealistic. I am not sure. If all the underwriter says is we have looked it over and it looks clean. Arguably it is less reasonable for an issuer to rely simply on that to determine its own compliance. My guess is the way these sort of deals are being struck between the bankers and the third party firms, that it may not provide for that kind of sharing that I talked about. So you have to see what you ultimately get from them and if you look at it and it's by reasonable third party and it's consistent with what your own knowledge is, it would seem to be a reasonable thing to do or at least think about doing, or relying on.

Dan Deaton: Okay. Elaine, let me ask this question: The deadline seems very close. Any possibility the SEC will extend the self-reporting deadline?

Elaine Greenberg: Well, the latest news is what we heard last week from Peter Chan at the GFOA conference. According to what he said, not likely. So, I don't think at this stage people can go into this hoping that there will be an extension. That's not to say at the eleventh hour one may be forthcoming, but again it would probably be too close to the deadline as we saw with regard to the extension of the implementation of the muni advisor rule. It was the actual day, January 13th that the commission decided to extend that. But again, that was rule making, which is different. This is the division of enforcement. And as we said, it is something that is a new initiative for the SEC, and I would not hold out hope that there would be an extension, but of course, one would be welcomed. And if the SEC were to contemplate giving an extension, hopefully it would announce that sooner rather than later when most people have done the work and it is very close to the deadline.

Dan Deaton: Okay. Scott a question is coming in. What if an underwriter does not read the full disclosure requirement and self-reports based off of a false positive report? So in other words, in the example given it's a requirement for the audit in 210 days, rather than the 180 days. So if they just get it wrong and self-report, what do you think the issuer or obligor should do about that?

Scott Ferguson: That's a good case for not filing, not self-reporting if that's the only failure there was for that particular issuer. But I would say then be prepared and make sure your general counsel or city attorney is prepared and have that memorialized somewhere in the file because there will be that red flag that goes up when your bonds are on the underwriter's self-report, but you yourself have not made a self-report. I would say protect yourself, put something in the file and be prepared to answer the question if the SEC chooses to do part two of the investigation based on the result of all of this.

Dan Deaton: Okay Kevin, question for you. Where does the school district start with the analysis? Do they go to the underwriter or their bond counsels? If they have multiple bond counsel they use, should they choose one bond counsel as the lead?

Kevin Civale: They should talk to the counsel they are most comfortable with. It is hard to say which counsel they should go to if they have a pool. Perhaps one has been more focused on the disclosure preparation than others. I don't think you rely on the underwriter. I think you need to understand what this initiative is in a more in-depth way than you can get from a session like this, and understand from counsel specifically how it may relate to you and then proceed from there. I don't think at the end of the day you can rely on the underwriter. I think as everybody has communicated throughout the call, you need to be in touch with them, and talk back and forth, but the first conversation should be with your own counsel.

Dan Deaton: Okay and Elaine, the question that has come in is basically, will this SEC initiative - here is a sort of sense of the question if I understand the question correctly. In essence is the SEC basically trying to force small debt issuers into private placement so they don't have to worry about the future SEC and compliance? In other words, is this initiative in essence, pushing smaller debt issuers out of the public municipal markets?

Elaine Greenberg: I don't believe so. I haven't heard that. Whether or not that is going to be one of the outcomes of the initiative; I guess it remains to be seen. But I have not heard, nor do I think that that was the SEC's thinking with regard to this particular initiative. Again, as I indicated earlier, I really believe that the SEC is looking at the market and believes that continuing disclosure has not been up to par and that this initiative is its way of trying to force better compliance, better disclosure in the market for investors.

Kevin Civale: That may be an unintended consequence though. I think you can see how issuer’s – you know, one of the issues that’s arising, is that you have lots of issuers who are very, very diligent and prepared good disclosure regularly in the market, and worked hard to get things right. Yet when you go to EMMA and it’s sort of difficult to find the filings. So I can see a smaller issuer thinking why am I going to take that all on if some of these larger issuers, who have a larger staff to be able to deal with this, can't get their arms around it? Why should I think that I can?

So the two follow up points: I hope this whole initiative - another thing that comes from it is sort of improvements. Query whether or not issuers should be in the ratings reporting loop at all. You know, that’s third party information. That’s available to the markets generally. Perhaps it is something that can be thought of going forward as just having MSRB and EMMA, and the SEC sort of figure out a way that it gets directly reported onto Emma so the issuers are taken out of that third party information loop.

Secondly, Emma is a dramatic improvement over the NRMSIR as we've all discussed. But it is still, with that database there is still room for a lot of improvement. We have been pouring over it the last several weeks and longer than that trying to find filings, and one CUSIP or another. So much improvement can be made even though it is much, much better than what was in place before.

Dan Deaton: Last question that I can ask. I had a couple of other questions we are not able to get to, not for a lack of trying, but we are at 11:30pm, which is the end of the end. So I will ask this to Scott. Scott, if you've got an issuer who is in the gray area of having less major failures, so there are failures but less major, we are not going to use the word material, because that would be a loaded question, but less major failures. So in our example that we used earlier, we have the three buckets. The first bucket is the underwriter self-reporting more major violations. The third bucket is the one where it seems like there really isn't a good reason to self-report, and that second bucket of a situation. The question is: What's the big deal with self-reporting? What's the major con? Why not self-report? Why not go ahead and do it? What would be the downside of self-reporting?

Scott Ferguson: That really is the con to just why decide - why to spend time deciding materiality. Let's just write it all down and self-report. I think Elaine's description of what this is, is really what you need to bear in mind. It's a legal proceeding and it's basically the same thing to a settlement with the federal government. And it can have consequences going forward if your entities, if the issuer makes another mistake presumably any time down the road, because you are already under a cease and desist order.

And the other thing to bear in mind and this is kind of the, it's not even the fine print, but it is something that I overlooked when I read the question the first time, the top of it says "this information that is being requested is subject to the Commission's routine uses." And when you look up what routine uses are and there are a couple; one of them is it means that anything you have submitted here can be and possibly will be shared with any other governmental agency. For infrequent issuers, that may not be a big deal, and for underwriters that might be a big deal. It means it can run through other regulatory bodies. The other piece of the routine use, it's not quite testimony, but it can definitely be used against you, and amongst others there is a charge of lying to the government. Should the government choose to use it, this would be basically an admission in evidence that would support a charge like that. So, I guess it's not to be taken lightly.

There have been suggestions out there that you hire - that issuers hire counsel experienced with the SEC, representing folks before the SEC. I don't know how many small to mid-size issuers are going to be able to do that or have the funds to do that, but it is still something to be thought of lately. And any decision to self-report would need to go before your governing body. And there's that process to think about. I foresee a lot of closed sessions in the later part of the summer with city attorneys and district general counsels trying to explain this to their governing board.

Dan Deaton: Okay, well very helpful. Mark, I turn it back to you.

Slide 12 – Thank you for your participation (1:31:06)

Mark Campbell: Okay Dan. I am just going to go ahead and close it out - Dan, Kevin, Scott, Elaine, thank you very much for your thoughtful consideration of the issue. I want to make sure all of those still listening know that the slides for this presentation are available, as well as slides from the earlier presentation. A transcript will follow along with the audio broadcast available for recast in the near future. As Dan indicated, the earlier webinar we did with Peter is available on the website with a transcript accompanying that. So with that, thank you all for participating, and thank you again to the speakers.