

SEC Settles with 71 State and Municipal Bond Issuers (MCDC Initiative Update)

On August 24, 2016, the Securities and Exchange Commission (the “SEC”) announced that it had entered into settlements with 71 state and municipal bond issuers and conduit borrowers under its Municipalities Continuing Disclosure Cooperation Initiative (“MCDC Initiative”). The MCDC Initiative was intended to encourage underwriters and issuers to self-report instances of materially inaccurate disclosures, or omissions, in final official statements regarding compliance with ongoing disclosure undertakings. The initiative noted that, for eligible issuers, the proposed settlement terms would not include any civil penalty but would require the issuer, among other things, to:

- Establish continuing disclosure policies, procedures and training; and
- Disclose the settlement terms in any official statement of the issuer for five years.

The SEC previously entered into settlements with 72 underwriting firms; the firms paid civil penalties up to a maximum amount of \$500,000 and agreed to remedial actions. The underwriter settlements outlined the failures to disclose late or missed continuing disclosure filings that gave rise to the settlements, ranging from financial statements that were filed just one month late to financial statements and operating data that were not filed at all.

The recent SEC settlements with state and municipal bond issuers and conduit borrowers likewise outline failures to disclose late or missed continuing disclosure filings. The settlements include issuers from 45 states, including two states, seven state authorities, seven local authorities, 29 localities (from small towns to large counties), six institutions of higher education, eight school districts, five health care providers, five utilities, one retirement community and one charter school. The SEC has not commented on whether it will pursue additional settlements with issuers that self-reported.

The following review of the 71 issuer settlements lists the specific failures cited in the settlement orders, and may be helpful in understanding what the SEC asserts as a material failure. The issuers and conduit borrowers settled without admitting or denying the findings. The settlement orders find that the issuers and conduit borrowers below sold municipal bonds with offering documents that contained materially false statements or omissions regarding compliance with required continuing disclosure undertakings. Issuers and conduit borrowers either stated that they were materially in compliance for the years preceding the issuance of the bonds, or listed some, but not all, failures to comply with their required undertakings. The settlement order cited the following instances of noncompliance that the issuers and conduit borrowers had not disclosed in the offering documents:

[City of Vestavia Hills, Alabama:](#)

- Filed audited financials between 10 and 21 months late;
- Failed to file notices of late filings.

[Board of Education of Madison County, Alabama:](#)

- Failed to file 2009 financials and filed 2010 financials over three months late.

[Borough of North Slope, Alaska:](#)

- Failed to file 2010 financials and operating data on time;
- Filed operating data for fiscal years 2006-09 by 199, 136, 125, and 77 days late;
- Filed financials for 2006-09 by 162, 136, 95, and 77 days late;
- Failed to file notices of late filings.

[Board of Trustees of Arkansas Tech University, Arkansas:](#)

- Filed 2006 audited financials 143 days late;
- Failed to file 2011 audited financials and operating data prior to posting 2012 and 2013 official statements;
- Failed to file notices of late filings.

[City of Alameda, California:](#)

- Failed to make any of the required filings for 2008–2012;
- Failed to file notices of late filings;
- Material misstatements /omissions about its prior compliance for offerings in which the City was an obligated person and for its own offerings.

[Boulder County, Colorado:](#)

- Filed annual financials between 140 and 230 days late;
- Failed to file notices of late filings.

[Thompson School District No. R2–J, Colorado:](#)

- Failed to file 2011 financials prior to 2012 offering, though due before;
- Failed to file notice of late filing.

[Colorado Department of Transportation:](#)

- Failed to file 2006–10 audited financials and operating data prior to the Department’s 2011 offering;
- Failed to file notices of late filing.

[Lawrence & Memorial Hospital and Lawrence & Memorial Corp., Connecticut:](#)

- Filed financials late by one,706 days, 1,341 days, and 976 days in years 2008–2010;
- Certain operating data reports were incomplete;
- Failed to file notices for the operating data reports.

[Town of Fairfield, Connecticut:](#)

- Filed audited financials late by 1,384 days, 1,017 days and 652 days in years 2006–2008;
- Failed to file notices for late filings.

[Delaware Transportation Authority:](#)

- Failed to file 2009 audited financials prior to offerings in 2012 and 2014;
- Failed to file notices for late filing.

[Fulton County, Georgia:](#)

- Filed audited financials late in fiscal years 2006, 2008, and 2009 by more than three, one, and four months, respectively;
- Failed to file notice of late filing for 2006 audit.

[State of Hawaii:](#)

- Failed to file audited financials for 2009 and 2010, although filed other information for those years;
- Subsequently filed the 2009 and 2010 financials 223 and 206 days late;
- Failed to file notices of late filings.

[Idaho Housing and Finance Assoc.:](#)

- Failed to file audited financials for fiscal years 2010 and 2011;
- Misrepresented that financial statements were contained in officials statements that were disseminated;
- Failed to file notices of late filings.

[Palatine Park District, Illinois:](#)

- Annual financial information for fiscal years 2006, 2007, 2008 and 2009 was filed late by 1,475 days, 946 days, 380 days, and 199 days.

[Community Unit School District No. 18, Illinois:](#)

- Failed to financials for fiscal years 2008–2011 prior to 2012 offering, although due before;

- Filed 2007 financials late by 811 days;
- Failed to file notices of late filings.

Metropolitan Airport Authority of Peoria, Illinois:

- Failed to file fiscal year 2010 and 2011 financial statements and operating data late by 207 and 108 days, respectively;
- Failed to file notices of late filings.

City of Gary, Indiana:

- Failed to file 2011 and 2012 audited financials prior to 2014 offering;
- Filed audited financials for 2008–2010 late by 220, 205, and 221 days, respectively;
- Failed to file notices of late filings.

Sanitary District of the City of Gary, Indiana:

- Failed to file financials for 2006 and 2007 by time of 2011 offering;
- Filed audited financials late for fiscal years 2008, 2009 and 2010 by 262, 205 and 222 days late, respectively;
- Failed to file notices of late filings.

City of Cedar Rapids, Iowa:

- Filed audited financials late for fiscal years 2007 and 2008 by four and five months;
- Failed to provide within EMMA cross–references to previously filed audited financial statements for 2009 and 2011, and for annual financials and operating data for 2008–2012;
- Failed to file required late notices.

City of West Des Moines, Iowa:

- Filed audited financials for fiscal years 2006–2008 late by approximately four, three, and two months, respectively;
- Filed 2009 audited financials 18 months late and failed to provide cross–reference to previously filed official statement, which contained audited financials for fiscal year 2009;
- Failed to file notices of late filings.

Unified School District No. 418, Kansas:

- Filed 2001 and 2012 annual financials 468 days and 102 days late;
- Failed to file notices of late filings.

[City of Andover, Kansas:](#)

- Failed to timely file 2006–2009 financials;
- Filed annual financials and operating data four months late;
- Failed to file material event notices in connection with certain defeasances;
- Failed to file notices of late filings.

[Kentucky Housing Corp.:](#)

- Filed 2009 and 2010 audited financials 404 and 38 days late, respectively;
- Filed 2009–2012 annual information and 2011–12 audited financials late;
- Failed to file notices of late filings.

[Electric and Water Plant Board, City of Frankfort, Kentucky:](#)

- Filed audited financials late for 2008, 2011, and 2012 by 10 months, two months, and three months, respectively;
- Failed to file 2010 audited financials prior to posting 2013 official statement;
- Filed operating data late for 2010 and 2012 by two months and one month;
- Failed to file notices of late filings.

[East Ouachita Parks School District, Louisiana:](#)

- Filed 2009 audited financials 252 days late and 2010 financials 157 days late;
- Failed to file notices of late filings.

[Town of York, Maine:](#)

- Filed audited financials late for 2006–2008 by 1,337 days, 859 days, and 456 days, respectively;
- Failed to file notices of late filings.

[Montgomery College, Maryland:](#)

- Failed to file 2006 and 2009 financials prior to posting 2011 official statement;
- Filed audited financials for 2007 and 2008 between four and 16 months late;
- Failed to file notices of late filings.

[Montgomery College Foundation, Maryland:](#)

- Failed to file audited financials for 2009 and 2010 prior to posting 2011 official statement;
- Filed audited financials for 2006–2008 between four and 52 months late;
- Failed to file notices of late filings.

[City of Chelsea, Massachusetts:](#)

- Filed 2007 audited financials 15 months late and 2010 audited financials 34 months late;
- Failed to file notices of late filings.

[Berien County, Michigan:](#)

- Filed audited financials late for 2009–2012 by 1,432, 1,067, 702, and 336 days late;
- Failed to file notices of late filings.

[State of Minnesota:](#)

- Failed to file 2008 audited financials for certain outstanding bonds;
- Filed 2010 audited financials 70 days late for certain outstanding bonds;
- Failed to file notices of late filings.

[Lauderdale County, Mississippi:](#)

- Failed to file 2007 and 2010 audited financials prior to posting 2011 official statement;
- Filed 2008 and 2009 audited financials between 144 to 200 days late;
- Failed to file notices of late filings.

[Ascension Health Alliance, Missouri:](#)

- Failed to file certain notices of defeasances prior to bond offering, resulting in bonds in the outstanding principal amount of over \$24.5 million trading with significantly different credit structures for up to two years.

[Black Jack Fire Protection District, Missouri:](#)

- Filed audited financials late for years 2005–2009 by 40 months, 28 months, 16 months, four months, and 11 months, respectively;
- Failed to file 2010–2012 audited financials;
- Failed to file operating data for 2005–2012;
- Failed to file notices of late filings.

[Blair Oaks R–II School District, Missouri:](#)

- Filed 2008 audit 2,168 days late and 2011 audit 712 days late;
- Failed to file certain operating data for 2009;
- Failed to file notices of late filings.

[Montana Dept. of Transportation:](#)

- Failed to file 2011 financials prior to posting 2012 official statement, although due before;

- Failed to file certain operating data concerning federal aid revenue for fiscal years 2007, 2008, 2010, and 2011 by the time of the 2012 offering. The federal aid revenue served as the security and primary source of repayment for the newly-issued securities.
- Failed to file notices of late filings.

City of Alliance, Nebraska:

- Failed to file 2010 and 2011 financials and 2008–2011 operating data prior to posting 2012 official statement;
- Failed to file notices of late filings.

Southern New Hampshire University:

- Failed to file 2008 and 2010 audited financials prior to posting of 2012 official statement;
- Filed 2007 financials three months late;
- Failed to file operating data for 2007–2011 by time of 2012 offering;
- Failed to file notices of late filings.

Borough of Roselle Park, New Jersey:

- Filed 2009–2012 financial statements late by 113 days, 11 days, 69 days, and 36 days, respectively;
- Filed operating data 132 days late for 2009 and failed to file operating data for 2010–2012;
- Failed to file notices of late filings.

Town of East Brunswick, New Jersey:

- Filed 2007 financials over one year late;
- Failed to file 2008–2012 annual financials;
- Failed to file notices of late filings.

El Castillo Retirement Residences, New Mexico:

- Failed to file 2008 financials;
- Filed 2007, 2009 and 2010 financials late by 92, 53, and 208 days, respectively;
- Failed to file certain operating data in fiscal years 2007–2011 and intermittently filed unaudited financials;
- Failed to file notices of late filings.

Franklin County, New York:

- Filed 2008–2010 financial statements between 249 and 1,721 days late.

[City of Ithaca, New York:](#)

- Filed audited financials for years 2006–2010 late by 16 months, 18 months, 10 months, eight months, and three months;
- Filed operating data late by approximately six months in 2006–2008;
- Filed notices of late filings for audited financials late (at same time financials filed).

[Syracuse University, New York:](#)

- Filed 2008 and 2009 audited financials late by 699 days and 335 days;
- Failed to file notices of late filings.

[Westchester County Health Care Corp., New York:](#)

- Failed to file certain operating data for fiscal years 2007, 2008 and 2010;
- Filed financial statements late by 53 months for fiscal year 2006;
- Failed to file notices of late filings.

[North Carolina Eastern Municipal Power Agency:](#)

- Failed to file 2009 and 2010 audited financials prior to posting 2012 OS;
- Filed 2007 and 2008 financials 468 and 103 days late;
- Failed to file notices of late filings.

[City of Devils Lake, North Dakota:](#)

- Filed 2007, 2008, 2009 and 2010 audited financials late by 228, 153, 149, and 64 days;
- Failed to file notices of late filings for 2007, 2008, and 2010 audited financials.

[Ohio State University:](#)

- Filed audited financials for fiscal years 2006, 2007, 2009, and 2010 late by two months, two months, one month, and nine months, respectively;
- Failed to file certain operating data for fiscal years 2008 through 2010;
- Failed to file timely notices of late filings.

[City of Nichols Hills, Oklahoma:](#)

- Filed 2008–2012 annual financial information between 99 and 463 days late;
- Failed to file notices of late filings.

[Oklahoma Housing Finance Agency:](#)

- Filed 2008 audited financials three months late, 2009 annual report five months late, and 2009 audited financials three months late;
- Failed to timely file notices of late filings for each.

[Yukon Municipal Authority, Oklahoma:](#)

- Failed to file 2008 financials and filed 2009 financials 251 days late;
- Failed to file 2010 and 2011 audited financials until after 2012 and 2013 offerings;
- Failed to file notices of late filings.

[Adams County, Pennsylvania:](#)

- Filed audited financials for 2006–2010 between five months and more than three years late;
- Failed to file operating data for 2008–2010;
- Failed to file notices of late filings.

[Collegium Charter School, Pennsylvania:](#)

- Filed audited financials for 2007–2010 late by nine months, 28 months, seven months, and two months, respectively;
- Failed to file required late notices.

[Hazleton Area School District, Pennsylvania:](#)

- Filed audited financials for 2008 and 2009 late by 432 and 152 days;
- Failed to file required late notices.

[Municipal Authority of McKeesport, Pennsylvania:](#)

- Filed audited financials for 2006–2011 between five and 11 months late;
- Failed to file operating data for 2008–2012;
- Failed to file notices of late filings.

[City of Columbia, South Carolina:](#)

- Failed to file audited financials for 2009 and 2010 by time of 2011 and 2012 offerings;
- Failed to file notices of late filings.

[Town of Hilton Head Island, South Carolina:](#)

- Filed annual reports late by 288 days and 43 days for fiscal years 2009 and 2010;
- Failed to file notices of late filings.

[Tea Area School District 41–5, South Dakota:](#)

- Filed audited financials late for 2007–2011 by 1,613 days, 400 days, 921 days, 611 days and 246 days;
- Filed operating data late for each of preceding fiscal years between 246 and 1,728 days late;

- Failed to file notices of late filings.

[City of Memphis, Tennessee:](#)

- Filed audited financials late for 2007 by 80 days, for 2009 by 610 days, although filed in the wrong location only 72 days late, and for 2010 by 245 days, although filed in the wrong location on time.
- Failed to file notices of late filings.

[Pecos County, Texas:](#)

- Filed fiscal year 2006, 2007 and 2008 financials late by five, six, and four months, respectively.
- Failed to file notices of late filings.

[Heber Light & Power Co., Utah:](#)

- Failed to file 2009 and 2010 audited financials;
- Filed 2006, 2007, and 2008 audited financials 1,125, 759 and 394 days late;
- Failed to file operating data for 2006–2009;
- Failed to file notices of late filings.

[Casella Waste Systems, Vermont:](#)

- Failed to file a material event notice related to an acquisition;
- Failed to file annual operating information and financial statements for fiscal year 2012 prior to posting of official statement in 2013, although due before;
- Failed to file notices of late filings.

[Carilion Clinic, Virginia:](#)

- Failed to file interim financials for second quarter of fiscal 2011;
- Failed to file operating data for fiscal 2010 and the second quarter of fiscal 2011;
- Failed to file notices of late filings.

[City of Bainbridge Island, Washington:](#)

- Failed to file 2009 and 2011 audited financials;
- Filed 2007 and 2008 audited financials 11 months and two months late;
- Failed to file notices of late filings.

[Public Utility District No. 1 of Whatcom County, Washington:](#)

- Failed to file annual reports for 2006–2008;
- Filed audited financials late for 2006–2008 by 982, 253, and 233 days late;
- Failed to file notices of late filings.

County Commission, Ohio County, West Virginia (on behalf of Ohio County Dev. Authority):

- Failed to file audited financials for 2007, 2008, 2010, 2011, and 2012 prior to offerings;
- Filed 2009 audited financials seven months late;
- Failed to timely file several quarterly reports.

City of Oconomowoc, Wisconsin:

- Filed audited financials 1,014 days late in fiscal year 2010.

Wyoming Community Development Authority:

- Filed audited financials late for 2006, 2008, and 2009 by 50 months, 26 months, and 13 months, respectively;
- Failed to file notices of late filings.

The findings outlined in the settlements underscore that the SEC views late or missed filings—or more specifically the failure to disclose late or missing filings—as material from a disclosure perspective under the federal antifraud laws. As we noted in a recent article regarding recent SEC enforcement actions, two consistent takeaways from the initiative and enforcement actions are: (1) the emphasis on adopting written disclosure policies and procedures and (2) the importance of periodic training regarding issuer responsibilities under the federal securities laws. The attached provides a summary of the key elements of written disclosure policies and procedures. <http://www.pacificallawgroup.com/on-the-to-do-list-for-municipal-bond-issuers-disclosure-policies-and-procedures-2/>

Please call any of our public finance attorneys if you have questions about the MCDC Initiative settlements or disclosure policies and procedures. Contact information is provided below.

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