

Finance Subcommittee Meeting
Monday November 3, 2014 4:30 P.M.
Dupage County Historical Museum

In attendance: Commissioner Morrill, Commissioner Luetkehans, President Kelly

Executive Director Mike Benard, Executive Assistant Donna Siciliano, Finance Director Rita Trainor, Assistant Finance Director Andrea Fisher, Lynda Given, Chapman & Cutler LLP, Dave Phillips, Speer Financial, Charlene Holtz, Tressler LLP.

Lynda Given from Chapman and Cutler updated everyone on the Securities and Exchange Commission (SEC) program entitled the Municipalities Continuing Disclosure Cooperation Initiative (MCDC Initiative) originally introduced by the SEC Enforcement Division in March, 2014, in connection with the continuing disclosure undertakings required by an SEC rule that was instituted in 1995 (Rule). The Rule prohibits (subject to certain exemptions not applicable to the District's bond sales at issue) underwriters from purchasing or selling municipal bonds unless the underwriter has made a reasonable determination that the issuing municipal entity has undertaken in a written agreement to provide certain annual financial information and event notices about itself and the security within the time required by the Rule to various information repositories (continuing disclosure commitment). In response to a question from Commissioner Luetkehans, David Phillips indicated that Speer had undertaken the responsibility of handling the annual filing of financial information with the information repositories on behalf of the District.

The Rule also requires final official statements to contain a statement describing any instance in the past 5 years in which the issuer failed to comply with previous continuing disclosure commitments. This is the focus of the MCDC Initiative.

After discovering that there appeared to be widespread noncompliance by municipal issuers with their continuing disclosure commitments and failure to include a description of that noncompliance in official statements issued in connection with subsequent bond issues, in March of 2014 the SEC announced the MCDC Initiative to give underwriters and issuers the opportunity to self-report material misstatements in official statements regarding the issuer's prior compliance with its continuing disclosure commitments in return for more lenient settlement terms in SEC enforcement actions. It was noted by both Lynda Given and Charlene Holtz that one of the challenges is that the MSDC Initiative does not define "materiality" with respect to prior misstatements and suggests only that the SEC will consider enforcement actions on a case by case basis. It was also noted that there is a good deal of uncertainty on what the SEC's actual approach to individual issuers will be.

The MCDC Initiative originally gave a self-reporting deadline for both underwriters and issuers of September 10, 2014. However, after feedback from interested parties, they decided to make the underwriters deadline remain at Sept 10 2014, but to give governmental units until December 1, 2014 to self-report. The underwriter of the District's 2013 rollover bonds included that bond offering in a list provided to the SEC as an offering which may have contained inaccurate statements regarding the District's compliance with its continuing disclosure obligations. Speer and Chapman and Cutler have reviewed their records and records provided to them by the District to determine the District's

compliance with its continuing disclosure obligations under the Rule and based on that review have concluded subject to further verification that it appears that the information provided by the reporting underwriter is correct, that the District didn't file its annual financial information with the appropriate repositories under the Rule in one year and filed the annual financial information after the time required by the Rule in three other years. Dave Phillips from Speer Financial explained that they had not updated the filing deadline for the District for the change in the District's fiscal year. (The District changed to a calendar year in 2008; 2009 was the first full calendar year.) They did update it for 2012, 2013 and 2014 and those years were filed timely.

Lynda Given stated that if we self-report the SEC Enforcement Division will most likely recommend that the SEC accept a settlement with no financial penalties and we will likely receive and be required to consent to a cease and desist order. Charlene Holtz indicated that as part of the consent order the District would most likely have to agree to undertake to disclose the settlement, including the cease and desist order in all offerings within a period of time after the settlement, to comply with existing continuing disclosure obligations including disclosure in future official statements of Rule compliance failures, to establish policies and procedures and training regarding continuing disclosure obligations, to cooperate with subsequent investigations and possibly other items. Rita Trainor noted that the District has already established policies and procedures and training even before it received the Underwriter's letter.

It was the general consensus of the meeting participants that given that the Underwriter had reported possible non-compliance by the District with its continuing disclosure obligations it was probably recommended that the District should self-report and make its case as to why the failure was not material. Charlene Holtz noted all of the ways which the District publicly discloses its financial health and that the information is readily available to the public including a prospective investor. It was also the consensus that to not self-report could result in a harder line by the SEC Enforcement Division.

Lynda Given noted that the Wheaton Park District will not be the only municipality affected by the MCDC Initiative. . Lynda, Dave Phillips and Charlene Holtz opined that based on the information they had reviewed, the MCDC Initiative will impact hundreds if not thousands of municipal issuers. In light of the anticipated number of reports that will be filed by the December 1 deadline, Lynda recommends that the District file the Wednesday before Thanksgiving. Charlene Holtz concurred.

In terms of the content of the self reporting questionnaire that the District will submit to the SEC, Charlene suggested that we inform the SEC that information regarding our finances can be found in multiple places including the State of Illinois and Wheaton Park District website; that the failure to file with the appropriate repository under the Rule was unintentional and not due to indifference. Charlene, Dave and Lynda will work together to draft the statement to be included in the Questionnaire to assist the staff of the SEC Division of Enforcement in understanding the circumstances of the District's non-compliance with the Rule. Charlene requested staff's assistance in providing/confirming for the drafting group the facts needed for the statement.

Charlene recommended that the Park Board take a formal vote at the November 19th Board meeting on a resolution that Lynda will provide authorizing the submission of the MCDC Initiative Questionnaire to the SEC.

Commissioner Luetkehans asked Charlene for a short memo to the full board stating that this was discussed at the Finance Subcommittee meeting and to include the Resolution to be attached to the memo. Individual Finance Subcommittee members can express their opinions and personal recommendations at that meeting.

Meeting adjourned at 5:00 p.m.