

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10030 / February 2, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17084; 3-17085; 3-17086; 3-17087;
3-17088; 3-17089; 3-17090; 3-17091; 3-17092;
3-17093; 3-17094; 3-17095; 3-17096 and 3-17097

In the Matter of

**Certain Underwriters
Participating in the
Municipalities Continuing
Disclosure Cooperation
Initiative,**

Respondents.

**ORDER UNDER RULES 262(b)(2), 405,
505(b)(2)(iii)(C), 506(d)(2)(ii), AND 602(e) OF
THE SECURITIES ACT OF 1933
GRANTING WAIVERS OF THE
DISQUALIFICATION PROVISIONS OF
RULES 262(a)(4)(ii), 505(b)(2)(iii),
506(d)(1)(iv), AND 602(c)(3) OF THE
SECURITIES ACT OF 1933, AND
GRANTING WAIVERS FROM BEING
INELIGIBLE ISSUERS**

I.

In March 2014, the Division of Enforcement (the “Division”) announced the Municipalities Continuing Disclosure Cooperation Initiative (the “MCDC Initiative”), a self-reporting program intended to address potentially widespread violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations.¹

Pursuant to the MCDC Initiative, the Division agreed to recommend that the Securities and Exchange Commission (“Commission”) accept settlement offers from underwriters that self-reported certain violations and that agreed to consent to certain standardized settlement terms.

The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and has generated much-needed attention within the municipal underwriter community about continuing disclosure compliance, the disclosure process, and due diligence. The MCDC Initiative has allowed the Commission to address an industry-wide problem, in part through cooperation and other significant remedial undertakings by the participants, while avoiding the expenditure of

¹ See Division of Enforcement, Securities and Exchange Commission, Municipalities Continuing Disclosure Cooperation Initiative, <http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml> (last modified Nov. 13, 2014).

significant resources typically associated with identifying and conducting full investigations of potential securities law violations.

II.

The Commission has issued several separate orders (“MCDC Orders”) instituting administrative and cease-and-desist proceedings against certain municipal underwriters who participated in the MCDC Initiative (the “MCDC Underwriters”).² These proceedings are consistent with the previously announced terms of the MCDC Initiative and are brought pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) (or, alternatively, Section 15B of the Exchange Act for underwriters solely registered with the Commission as municipal securities dealers) for willful violations of Section 17(a)(2) of the Securities Act for failure to conduct adequate due diligence on certain municipal securities offerings. Specifically, the MCDC Underwriters failed to form a reasonable basis for believing the truthfulness of certain material representations by municipal issuers in official statements issued in connection with those offerings. The MCDC Orders, which state that they are being issued pursuant to the MCDC Initiative, require that the respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and undertake to retain an independent consultant to conduct a compliance review and take reasonable steps to implement the consultant’s recommendations, among other things. The MCDC Orders trigger a number of disqualifications from exemptions available under the Securities Act for the MCDC Underwriters, and for certain issuers which have MCDC Underwriters as subsidiaries (“MCDC Issuers”).

III.

Waivers of Disqualification Under Rule 262 of Regulation A and Rules 505 and 506 of Regulation D

Rule 262 of Regulation A and Rules 505 and 506 of Regulation D provide for disqualification from exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) or 15B(c) of the Exchange Act that places limitations on that entity’s activities, functions, or operations, including the retention of an independent consultant. See 17 C.F.R. §§ 230.262(a)(4)(ii), 230.505(b)(2)(iii), and 230.506(d)(1)(iv)(B).

The Commission has the authority to waive the Regulation A and D disqualifications upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. See 17 C.F.R. §§ 230.262(b)(2), 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Ineligible Issuer Waiver

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned

² The list of MCDC Underwriters subject to this Order is included in an Appendix to this Order.

issuer status, if “[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . .” See 17 C.F.R. § 230.405(1)(vi).

Under the second paragraph of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. See 17 C.F.R. § 230.405(2).

Waiver from Regulation E Disqualification

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. Rule 602(c)(3) makes this exemption unavailable for the securities of an issuer if, among other things, any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. See 17 C.F.R. § 230.602(c)(3). Rule 602(e) provides, however, that the disqualification shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption from registration pursuant to Regulation E be denied. See 17 C.F.R. § 230.602(e).

Good Cause

In light of the participation of the MCDC Underwriters in the MCDC Initiative and their agreement to consent to its terms, assuming the MCDC Underwriters comply with the terms of the MCDC Orders, and in light of the benefits of the MCDC Initiative discussed herein, the Commission has determined that good cause exists for not denying the various exemptions from registration discussed herein, and for MCDC Issuers to receive waivers from being ineligible issuers that results from the entry of the MCDC Orders.

IV.

Based on the foregoing, the Commission has determined that pursuant to Rules 262(b)(2), 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, the requisite showings of good cause have been made.

Accordingly, IT IS ORDERED, pursuant to Rules 262(b)(2), 505(b)(2)(iii)(C), 506(d)(2)(ii), and 602(e) of the Securities Act, and Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that waivers from the application of the disqualification provisions of Rules 262(a)(4)(ii), 505(b)(2)(iii), 506(d)(1)(iv)(B), and 602(c)(3) of the Securities Act, and waivers from being ineligible issuers under Rule 405 of the Securities Act, resulting from the entry of the MCDC Orders against the MCDC Underwriters are hereby granted, as

reflected in the attached appendices. Nothing in this Order shall effect any pre-existing disqualification or ineligibility under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any MCDC Underwriter or MCDC Issuer. Failure to comply with terms of the MCDC Orders would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Because of the unique nature of the MCDC Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Brent J. Fields
Secretary

Appendices: MCDC Underwriters
MCDC Issuers

The MCDC Underwriters

Barclays Capital Inc.
Boenning & Scattergood, Inc.
D.A. Davidson & Co.
First Midstate Incorporated
Hilltop Securities Inc.
Janney Montgomery Scott LLC
Jefferies LLC
KeyBanc Capital Markets Inc.
Mitsubishi UFJ Securities (USA), Inc.
Municipal Capital Markets Group, Inc.
Roosevelt & Cross, Incorporated
TD Securities (USA) LLC
United Bankers' Bank*
Wells Fargo Bank, N.A. Municipal Products Group*

* Since neither United Bankers' Bank nor Wells Fargo Bank, N.A. Municipal Products Group will be subject to an order entered pursuant to either Section 15(b) or Section 15A(1) of the Exchange Act, they do not need a waiver from the disqualification provision contained in Rule 602(c)(3) of Regulation E.

MCDC Issuers

Barclays PLC (Barclays Capital Inc.)

Barclays Bank PLC (Barclays Capital Inc.)

Hilltop Holdings Inc. (Hilltop Securities Inc.)

Jefferies Group LLC (Jefferies LLC)

Leucadia National Corporation (Jefferies LLC)

KeyCorp (KeyBanc Capital Markets Inc.)

Mitsubishi UFJ Financial Group, Inc. (Mitsubishi UFJ Securities (USA), Inc.)

The Toronto-Dominion Bank (TD Securities (USA) LLC)

Wells Fargo & Company (Wells Fargo Bank, N.A. Municipal Products Group)