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CONTINUING DISCLOSURE REQUIREMENTS AND THE CONTINUED USE OF MUNICIPAL BONDS IN SPORTS

MINDI FRIEDMAN*

I. INTRODUCTION

Levi's Stadium in Santa Clara, California, is the new home of the San Francisco 49ers.¹ Besides opening for the first time in the 2014 season, the stadium can also be considered new given its state-of-the-art amenities.² Some of these new features include five clubs, a stacked, glass skybox of luxury suites, and field-facing concession stands.³ The final estimated cost of this new stadium was around \$1.31 billion, funded by a combination of public and private funds.⁴

While the positive impact of a new stadium on the surrounding community has yet to be felt, the question remains whether the cost to the public is worth it.⁵ Further, with the increasing amount of municipal debt and noncompliance with securities laws, the newer question is whether public financing will continue to be used to fund sports facilities.

One form of public financing often used in stadium or arena construction is municipal bonds.⁶ Municipal bonds are issued by a municipality to fund

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1. *Stadium Info*, LEVI'S® STADIUM, <http://www.levisstadium.com/stadium-info/about-levis-stadium/> (last visited Dec. 14, 2015).

2. See Tim Newcomb, *Inside 49ers' New Home, Levi's Stadium, a Venue Unlike Any Other*, SPORTS ILLUSTRATED (Aug. 1, 2014), <http://www.si.com/nfl/2014/08/01/levis-stadium-san-francisco-49ers>.

3. *Id.*

4. John Coté, *Levi's Stadium: 49ers Happy, Santa Clara May Be on Hook*, SFGATE, <http://www.sfgate.com/49ers/article/Levi-s-Stadium-The-1-3-billion-bet-5687409.php> (last updated Aug. 14, 2014).

5. See *id.*

6. See *Investor Bulletin: Municipal Bonds*, SEC, <http://www.sec.gov/investor/alerts/municipal-bonds.htm> (last modified June 15, 2012) [hereinafter *Investor Bulletin*].

public projects and may be tied to local taxes.⁷ When issuing bonds, and throughout the life of a bond, a municipality is required to disclose the bond's official statement, as well as annual financial information under Rule 15c2-12 of the Securities Exchange Act of 1934 (Rule 15c2-12).⁸ Unfortunately, this continuing disclosure rule has not been followed in recent years.⁹

Given the problem of noncompliance with this rule, the Securities and Exchange Commission (SEC) instituted the Municipal Continuing Disclosure Cooperation Initiative (the Initiative).¹⁰ Under the Initiative, the SEC encourages self-reporting of violations and pledges to award favorable settlement terms to those who report.¹¹

This Article will discuss the potential effects of the Initiative on the use of municipal bonds in sports. Part II will give an overview of municipal bonds, including their characteristics and the structure that governs them. Part III will lay out how municipal bonds are used in sports. Part IV will then provide specific examples of municipal bonds in sports. Part V will describe Rule 15c2-12, while Part VI will reveal more details of the Initiative. Part VII will explore the effects of the Initiative on municipal bond use in sports. Part VIII will summarize these Parts and conclude with the future implications of this analysis.

II. OVERVIEW OF MUNICIPAL BONDS

To begin, municipal bonds have many favorable investment characteristics. In addition, they are issued by municipalities and are regulated by the SEC.¹² As a result of their characteristics and regulatory scheme, municipal bonds are often used to fund local projects, such as a stadium or an arena.¹³

7. *Id.*

8. 17 C.F.R. § 240.15c2-12(b) (2014).

9. *See, e.g.*, Sec. & Exch. Comm'n v. Dain Rauscher, Inc., 254 F.3d 852 (9th Cir. 2001).

10. *Municipalities Continuing Disclosure Cooperation Initiative*, SEC, <http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml> (last modified Nov. 13, 2014) [hereinafter *MCDC Initiative*].

11. *Id.*

12. *The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation*, SEC, <http://www.sec.gov/about/whatwedo.shtml> (last modified June 10, 2013) [hereinafter *The Investor's Advocate*].

13. *See Investor Bulletin*, *supra* note 6.

A. Characteristics

A municipal bond is a security issued by a municipality to fund a public project, such as a road, a school, or a sports facility.¹⁴ Because these bonds are issued by states, counties, or cities, municipal bonds are considered a source of public financing.¹⁵ Additionally, municipal bond interest payments are tax-exempt.¹⁶ There are two types of municipal bonds: general obligation bonds and revenue bonds.¹⁷ Both types are used to fund sports facility construction.

1. General Obligation Bonds

General obligation bonds are considered full faith and credit bonds under the state taxing authority.¹⁸ This means they are repaid through general taxes.¹⁹ As with any state tax, general obligation bonds cannot be issued without voter approval.²⁰ Therefore, public support is often needed for projects utilizing general obligation bonds.²¹ Such support is often easy to elicit for a sports facility, given the amount of fans in the surrounding community.

2. Revenue Bonds

Revenue bonds, on the other hand, are tied to a specific source of revenue, such as a current project.²² Accordingly, the theory is that a project will fund itself through the revenue produced.²³ As revenue bonds are not tied to state taxes, they do not require voter approval to be used.²⁴ That being said, public support may still be sought to generate the requisite revenue. Much like fan support for general obligation bonds, revenue-based support via ticket or merchandise sales is also easily found.

14. *See id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. Christine Sgarlata Chung, *Municipal Securities: The Crisis of State and Local Government Indebtedness, Systemic Costs of Low Default Rates, and Opportunities for Reform*, 34 CARDOZO L. REV. 1455, 1465 (2013).

21. *See id.* at 1465–66.

22. *Investor Bulletin*, *supra* note 6.

23. Chung, *supra* note 20, at 1466.

24. *Id.*

B. Regulation

Beyond these basic characteristics, municipal bonds are also regulated by multiple entities, as required by Congress.²⁵ Generally, the SEC issues overall regulations, while the Municipal Securities Rulemaking Board (MSRB) further governs municipal bonds.²⁶ The SEC also requires the MSRB to host a searchable municipal bond database for investors known as Electronic Municipal Market Access (EMMA).²⁷

1. The SEC

First, the SEC is the government agency tasked with regulating the securities industry.²⁸ A security is an instrument of debt, such as a note, stock, or bond.²⁹ As municipal bonds are a form of security, they fall under the SEC's jurisdiction.³⁰ According to the SEC's website, its mission is to protect investors and maintain the markets for securities.³¹ To accomplish these goals, the SEC issues regulations for market participants based on the Securities Exchange Act, as well as related subsequent acts (e.g., the Sarbanes-Oxley Act).³² For example, Rule 15c2-12 is the regulation that requires continuing disclosure under the Securities Exchange Act and is the focus of this Article.³³ In addition to the issuance of regulations, the SEC also serves as the enforcement agency for those rules and regulations.³⁴ To enforce a rule, the SEC may conduct an investigation, file a civil suit, or initiate an administrative adjudication.³⁵ Example enforcement actions include fraud and insider trading.³⁶ Most recently, the SEC instituted the Initiative as a way to enforce Rule 15c2-12.³⁷

25. *The Investor's Advocate*, *supra* note 12.

26. *See generally* MUN. SEC. RULEMAKING BD., THE MSRB AND THE MUNICIPAL SECURITIES MARKET (2015), <http://www.msrb.org/msrb1/pdfs/MSRB-brochure-2014.pdf>.

27. *Electronic Municipal Market Access (EMMA) Website*, MSRB, <http://www.msrb.org/About-MSRB/Programs/EMMA.aspx> (last visited Nov. 7, 2015) [hereinafter *EMMA*].

28. *The Investor's Advocate*, *supra* note 12.

29. *Glossary of Municipal Securities Terms*, MSRB, <http://www.msrb.org/Glossary/Definition/SECURITY.aspx> (last visited Dec. 14, 2015).

30. *Id.*

31. MUN. SEC. RULEMAKING BD., *supra* note 26.

32. *See id.*

33. 17 C.F.R. § 240.15c2-12 (2014).

34. *The Investor's Advocate*, *supra* note 12.

35. *Id.*

36. *Id.*

37. *MCDC Initiative*, *supra* note 10.

2. The MSRB

Along with the SEC, the MSRB specifically oversees the municipal bond market.³⁸ Similar to the SEC, the MSRB's mission includes protecting both investors and the bond market.³⁹ Likewise, the MSRB issues rules and regulations that all market participants must follow.⁴⁰ As the SEC serves as the enforcement agency for all securities, the SEC must approve the MSRB's rules prior to their enactment.⁴¹ To provide additional market protection and transparency, the MSRB created EMMA to collect information, such as municipal bond disclosures.⁴²

3. EMMA

Finally, EMMA is the official online repository of the MSRB.⁴³ Dealers and issuers upload municipal bond information to EMMA.⁴⁴ The information available on EMMA is free to the public and can easily be downloaded from the website.⁴⁵ Using the quick search box in the top left-hand corner of all EMMA pages, municipal bond documents can be located by keywords in the title or issuer name (e.g., "Sports"). This repository contains official bond statements and their accompanying filings, like those required by Rule 15c2-12.⁴⁶ In addition, EMMA provides real-time bond trading data to ensure transparency for investors.⁴⁷ EMMA's trade activity feed includes actively traded securities and recent trades, as well as a trade search function.⁴⁸ Beyond municipal bond information, EMMA also contains the 529 College Savings Plans offered by states.⁴⁹

38. MUN. SEC. RULEMAKING BD., *supra* note 26.

39. *Id.*

40. *MSRB Rules*, MSRB, <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules.aspx> (last visited Dec. 14, 2015).

41. *MSRB Rulemaking Process*, MSRB, <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rulemaking%20Process.aspx> (last visited Dec. 14, 2015).

42. *EMMA*, *supra* note 27.

43. *About EMMA*, EMMA, <http://emma.msrb.org/AboutEMMA/Overview.aspx> (last visited Dec. 14, 2015).

44. *See EMMA Dataport*, EMMA, <http://dataport.emma.msrb.org/AboutDataport.aspx?ReturnUrl=%2fSubmission%2fSubmissionPortal.aspx> (last visited Dec. 14, 2015).

45. *See id.*

46. *Id.*

47. *Id.*

48. *Trade Activity*, EMMA, <http://emma.msrb.org/TradeData/MostActivelyTraded> (last visited Dec. 14, 2015).

49. *529 College Savings Plans*, EMMA, <http://emma.msrb.org/Search/Plan529.aspx> (last visited

III. USE OF MUNICIPAL BONDS IN SPORTS

Municipal bonds are often used to fund stadiums and arenas given the importance of these facilities to a surrounding community.⁵⁰ In recent years, a combination of public and private funding emerged due to escalating costs.⁵¹ Furthermore, the current trend toward state-of-the-art facilities only increased the need for additional funding.⁵² One current example of public financing in sports is the upcoming Minnesota Vikings stadium.⁵³

A. Sports Facility Funding

To fund a sports facility, a city may turn to municipal bonds due to the ease of public support.⁵⁴ As discussed, the use of a general obligation bond needs voter approval due to its link to taxes.⁵⁵ Conversely, revenue bonds are tied to a project itself.⁵⁶ Outside of these public sources, private loans could also be used to fund a facility.⁵⁷ Though sports facility financing was originally purely public, there has been a trend of public-private partnerships in recent years to meet the increased costs of state-of-the-art facilities.⁵⁸

1. Public

Initially, sports facility financing began as purely public.⁵⁹ This means that the majority of a stadium or arena's costs were covered by government funds, such as loans, and later, municipal bonds.⁶⁰ For example, the City of Chicago originally built Soldier Field as Grant Park Municipal Stadium in

Dec. 14, 2015); *see, e.g., Our History*, C. SAVINGS PLAN. COMPANY, <http://www.myfloridaprepaid.com/who-we-are/> (last visited Dec. 14, 2015).

50. *See* MARTIN J. GREENBERG, *THE STADIUM GAME* 149 (2d ed. 2000).

51. *Id.* at 151.

52. *See* Martin J. Greenberg, *Sports Facility Financing and Development Trends in the United States*, 15 MARQ. SPORTS. L. REV. 93, 93–94 (2004).

53. *See New Stadium Q&A*, MINN. VIKINGS, <http://www.vikings.com/stadium/new-stadium/faq.html#cost> (last visited Dec. 14, 2015).

54. *See Investor Bulletin*, *supra* note 6.

55. Chung, *supra* note 20.

56. *Investor Bulletin*, *supra* note 6.

57. *See* Greenberg, *supra* note 52, at 122.

58. GREENBERG, *supra* note 50, at 151.

59. *See* Andrew H. Goodman, *The Public Financing of Professional Sports Stadiums: Policy and Practice*, 9 SPORTS LAW. J. 173, 180–81 (2002).

60. *Id.* at 175–76.

1924.⁶¹ These original facilities were largely multi-use (e.g., for sports and other events).⁶² Construction of such multi-use public facilities was not met with much criticism.⁶³ Taxpayers were happy to support such projects the same as they were a new highway or other infrastructure addition to benefit the entire community.⁶⁴

2. Public-Private Partnership

Now, the trend is to use a public-private partnership, rather than purely public funds, as sports facility costs escalated.⁶⁵ A public-private partnership is as it sounds: the joint use of both public and private funds to construct a stadium or arena⁶⁶ (e.g., municipal bonds from a county coupled with private loans from team ownership).⁶⁷ Though the perception is an equal partnership, the percentage of contributions from each side varies (e.g., 70% public).⁶⁸ Furthermore, rather than a multi-use space, these newer partnership-funded facilities are single-use and state-of-the-art.⁶⁹ As a result, there is mixed public reception for these facilities.⁷⁰

B. Effects of Sports Facility Funding

Though public support may not be required for the use of municipal bonds based on revenue, the positive impact of sports facility construction is still championed by municipalities to encourage attendance and related spectator spending.⁷¹ There has been a vast amount of scholarship on both sides of the debate regarding whether the projected positive effects (e.g., job growth) actually occur once a facility is complete.⁷² On the other hand, recent reports of

61. *Stadium History*, SOLDIERFIELD, <http://www.soldierfield.net/content/stadium-history> (last visited Nov. 28, 2015).

62. *See, e.g., id.* (explaining that Soldier Field was used “for events and a playground for the people.”).

63. Goodman, *supra* note 59.

64. *Id.* at 181.

65. GREENBERG, *supra* note 50, at 151.

66. *Id.*

67. *See* Greenberg, *supra* note 52, at 122.

68. *See id.* at 123.

69. *See, e.g.,* Coté, *supra* note 4.

70. *Id.*

71. *See, e.g., Economic Impact*, MINN. VIKINGS, <http://www.vikings.com/stadium/new-stadium/economic-impact.html> (last visited Dec. 14, 2015).

72. Goodman, *supra* note 59, at 206–08.

high municipal debt and bond defaults may serve to negate these potential positive effects.⁷³ Further, there may actually be a negative impact on taxpayers as repayment amounts increase.⁷⁴ For instance, Bloomberg Business estimated the total cost for taxpayers is \$4 billion as of 2012.⁷⁵ With the amount of facilities either under construction or in the planning phase, it can be assumed this number has only increased.

Moreover, recent studies suggest the cost to the public is underestimated.⁷⁶ Though there may still be positive growth within a surrounding community, the operating costs of a facility are often greater than originally projected.⁷⁷ As a result, the impact could be more neutral than exclusively positive as projected.⁷⁸ Sports economist Andrew Zimbalist offers the following reasons for a lack of positive effects: first, sports teams are only moderately sized businesses;⁷⁹ second, local family incomes are relatively fixed;⁸⁰ third, sports dollars may be used outside of a local economy;⁸¹ and finally, sports facilities create a budget gap, as the majority of their private revenue is not shared with local government.⁸² This way, neutral or even negative effects on the public from sports facility construction supports the trend of public-private partnerships, with an increase in the private contribution percentage.

In sum, municipal bonds are used to fund sports facilities due to their local importance. Recently, there has been a trend away from purely public financing towards a more public-private partnership. The uncertain effects of a new facility on a surrounding community contribute to this trend. The increased costs of state-of-the-art construction or renovation also lead to more reliance on

73. See, e.g., Reed Albergotti & Cameron McWhirter, *A Stadium's Costly Legacy Throws Taxpayers for a Loss*, WALL STREET J. (July 12, 2011), <http://online.wsj.com/news/articles/SB10001424052748704461304576216330349497852>.

74. See, e.g., Aaron Kuriloff & Darrell Preston, *In Stadium Building Spree, U.S. Taxpayers Lose \$4 Billion*, BLOOMBERG BUS. (Sept. 4, 2012), <http://www.bloomberg.com/news/2012-09-05/in-stadium-building-spree-u-s-taxpayers-lose-4-billion.html>.

75. *Id.*

76. See, e.g., Judith Grant Long, *Full Count: The Real Cost of Public Funding for Major League Sports Facilities*, 6 J. SPORTS ECON. 119, 120 (2005).

77. Dennis Coates, *A Closer Look at Stadium Subsidies*, AM. ENTERPRISE INST. (Apr. 29, 2008), <http://www.aei.org/publication/a-closer-look-at-stadium-subsidies>.

78. *Id.*

79. Andrew Zimbalist, *Sports Facilities and Economic Development*, 29 GOV'T FIN. REV. 94, 94 (2013).

80. *Id.*

81. *Id.*

82. *Id.* at 95.

private rather than public funds.

IV. RECENT EXAMPLES OF MUNICIPAL BONDS IN SPORTS

There are many recent examples of municipal bond use in sports.⁸³ This Part will limit the discussion to the newly opened Levi's Stadium (home of the San Francisco 49ers) and Marlins Park (home of the Miami Marlins), as well as the upcoming Minnesota Vikings' stadium and Detroit Red Wings' arena. Furthermore, the Atlanta Braves' new SunTrust Park in Cobb County demonstrates less reliance on public financing (only 45%).⁸⁴

A. Levi's Stadium

As introduced above, Levi's Stadium is the new home of the San Francisco 49ers.⁸⁵ Located in Santa Clara, California, in the heart of Silicon Valley, it is considered the most technologically advanced facility in sports.⁸⁶ From increased bandwidth for thousands of in-stadium Wi-Fi adaptors, to partnerships with the nearby tech companies (e.g., Sony), to its own app, Levi's Stadium sets the standard for future venues, including those currently under construction.⁸⁷ However, these improvements are not without cost.⁸⁸ Like many such projects, the City of Santa Clara created a stadium authority to oversee the public funds in the form of both general obligation bonds (tied to a hotel tax) and revenue bonds (from stadium revenue).⁸⁹ Of the estimated \$1 billion in funds, these municipal bonds made up more than \$600 million.⁹⁰ Going forward, it will be interesting to see if there are sufficient incoming tax and revenue dollars to meet this obligation.⁹¹ It is also yet to be seen whether there is a positive impact on the surrounding community from the addition of this

83. See, e.g., Kevin Baumer, *The 10 Shiniest New Sports Stadiums*, BUS. INSIDER (Oct. 27, 2010), <http://www.businessinsider.com/new-stadiums-2010-10?op=1>; *America's New Sports Stadiums*, CNBC, <http://www.cnbc.com/id/30035515> (last visited Dec. 14, 2015).

84. Michael Buteau, *Cobb County to Fund 45% of Atlanta Braves' New Baseball Stadium*, BLOOMBERG BUS. (Nov. 14, 2013), <http://www.bloomberg.com/news/2013-11-14/cobb-county-to-fund-45-of-atlanta-braves-new-baseball-stadium.html>.

85. *Stadium Info*, *supra* note 1.

86. Tim Bajarin, *Meet Levi's Stadium, the Most High-Tech Sports Venue Yet*, TIME (Aug. 18, 2014), <http://time.com/3136272/levis-stadium-tech/>.

87. *Id.*

88. Coté, *supra* note 4.

89. *Id.*

90. *Id.*

91. *Id.*

high-tech facility.⁹²

B. Marlins Park

In 2012, the Miami Marlins baseball team opened the entirely public-funded Marlins Park.⁹³ The new stadium has a retractable roof and an outfield pool, among other crowd-pleasing features.⁹⁴ However, it is likely to cost Miami-Dade County about \$1 billion to pay for this project.⁹⁵ Recently, the team suffered from poor attendance, even with the updated facility.⁹⁶ As a result, the financial community dubs the Marlins Park a disaster.⁹⁷ Moreover, this amount of county debt is likely what led the Miami Dolphins' owner to finance its upcoming stadium renovations with purely private funds, rather than relying on municipal bonds.⁹⁸ Thus, this example supports the trend away from entirely public funding for new construction or renovation.

C. Minnesota Vikings Stadium

In contrast, much like Levi's Stadium, the Minnesota Vikings' estimated \$1 billion stadium is being funded by a mixture of public and private funds.⁹⁹ This arrangement can be considered similar to an equal public-private partnership given the \$462 million in municipal bonds and \$500 million from the team itself.¹⁰⁰ Though the county recently provided \$350 million for Target Field (home of the Minnesota Twins), the project is doing well enough to allow

92. *Id.*

93. Mike Ozanian, *Miami Marlins Have Become Baseball's Most Expensive Stadium Disaster*, FORBES (Jan. 27, 2013), <http://www.forbes.com/sites/mikeozanian/2013/01/27/miami-marlins-have-become-baseballs-most-expensive-stadium-disaster/>.

94. *See About Marlins Park*, MIAMI MARLINS, http://miami.marlins.mlb.com/mia/ballpark/new_ballpark.jsp (last visited Dec. 14, 2015).

95. Douglas Hanks, *How a \$91 Million Loan on the Marlins Ballpark Will Cost Miami-Dade \$1.2 Billion*, MIAMI HERALD (Jan. 24, 2013), <http://www.miamiherald.com/news/business/economic-time-machine/article1946635.html>.

96. *See MLB Attendance Report - 2014*, ESPN, http://espn.go.com/mlb/attendance/_/year/2014 (last visited Dec. 14, 2015).

97. Ozanian, *supra* note 93.

98. *See* Hanks, *supra* note 95; Alain Poupart, *Sun Life Stadium Modernization Plan Approved by Miami-Dade County Commission*, MIAMI DOLPHINS (June 17, 2014), <http://www.miamidolphins.com/news/article-1/Sun-Life-Stadium-Modernization-Plan-Approved-By-Miami-Dade-County-Commission/18610982-a679-4ddc-abe5-e9bf1518e8e7>.

99. Tim Nelson, *Vikings Stadium Bonds Have Been Sold, Deal Is Done*, MINN. PUB. RADIO NEWS (Jan. 28, 2014, 12:53 PM), <http://blogs.mprnews.org/stadium-watch/2014/01/28/vikings-stadium-bonds-have-been-sold-deal-is-done/>.

100. *Id.*

for additional facility construction.¹⁰¹ With an incoming \$1.8 million per month from sales tax, the Minnesota Vikings were able to make \$5.7 million in early payments on its bonds.¹⁰² Furthermore, given the condition of the now-demolished Metrodome, this new facility can also be considered a necessity and provides additional support for the use of public funds in Minnesota.¹⁰³

D. Detroit Red Wings Arena

Another trend in sports facility construction is mixed-use development for entertainment districts, such as the Los Angeles Lakers' L.A. Live.¹⁰⁴ In Detroit, the Red Wings' new arena will be complete with outside shopping and dining for about \$650 million.¹⁰⁵ Beyond the arena and surrounding plaza, the plan also includes residential space and a five-story parking garage.¹⁰⁶ To accomplish this project, equal contributions from public and private funds will be used, similar to the Minnesota Vikings' stadium.¹⁰⁷ Additionally, the age of the current Joe Louis Arena makes the Red Wings' project a necessity and supports the use of public financing.¹⁰⁸

E. Cobb County

Lastly, SunTrust Park (home of the Atlanta Braves) in Cobb County, Georgia, combines many of the factors demonstrated by these examples. First, though a public-private partnership, this project calls only for 45% public

101. Doug Grow, *Target Field/Sales Tax Combo Providing a Financial Home Run for Hennepin County and Minneapolis*, MINNPOST (Oct. 5, 2010), <http://www.minnpost.com/politics-policy/2010/10/target-fieldsales-tax-combo-providing-financial-home-run-hennepin-county-and>.

102. *Id.*

103. See *Giants-Vikings Moved to Ford Field*, ESPN (Dec. 13, 2010), <http://sports.espn.go.com/nfl/news/story?id=5911532>; *Metrodome Demolition Complete*, ESPN (Apr. 17, 2014), http://espn.go.com/nfl/story/_/id/10795462/demolition-metrodome-former-home-minnesota-vikings-completed.

104. See *Visitor Center*, L.A. LIVE, <http://www.lalive.com/visitor-center> (last visited Dec. 14, 2015).

105. David Muller, *\$650 Million Detroit Red Wings Arena Project 'Culmination' of Ilitch Family's Work in the City*, MLIVE (Sept. 25, 2014), http://www.mlive.com/business/detroit/index.ssf/2014/09/ceremonial_dirt_thrown_650_mil.html.

106. Bill Shea, *Work Starts Thursday on Red Wings Arena: Details on Funding, Development, Design*, CRAIN'S DETROIT BUS. (Sept. 24, 2014), <http://www.craindetroit.com/article/20140924/NEWS/14092929/work-starts-thursday-on-red-wings-arena-details-on-funding>.

107. Muller, *supra* note 105.

108. See *Arena History and Facts*, DETROIT RED WINGS, <http://redwings.nhl.com/club/page.htm?id=69111> (last visited Dec. 14, 2015).

funding, the smallest percentage found in this Article.¹⁰⁹ In addition, the plan includes mixed-use development similar to that of the Red Wings.¹¹⁰ The area around the stadium will include shops and restaurants, as well as residential and office space.¹¹¹ Much like Minnesota and Miami, the City of Atlanta is also scheduled to build a new facility for the Atlanta Falcons during the same time.¹¹² This plan for multiple facilities may be the reason why the Cobb County project has the smallest percentage of financing from the public.

As evident, these examples reveal a trend away from entirely public-funded stadiums and arenas. The increase in costs from the latest technology and the need for a surrounding entertainment district also support the use of private financing. Cities and counties working on multiple facility construction or renovation are more likely to turn to private investors as well.

V. MUNICIPAL BOND DISCLOSURE REQUIREMENT

Next, Rule 15c2–12 requires municipal bond issuers and underwriters to continually disclose certain financial information and also serves as an anti-fraud provision by requiring an acknowledgement of compliance.¹¹³ Lately, there have been concerns with noncompliance through failure to file, as well as false statements of past compliance.¹¹⁴ This noncompliance has the potential to affect the use of municipal bonds in sports facility construction going forward.

A. Rule 15c2–12

Under Rule 15c2–12, municipal bond continuing disclosure is required.¹¹⁵ The first part of compliance with this rule relates to a bond's official statement. This document must contain a statement of prior compliance with the rule in the previous five years or describe instances of noncompliance within the same timeframe.¹¹⁶ Once a bond is issued, annual financial information and

109. Buteau, *supra* note 84.

110. See *Development Renderings*, ATLANTA BRAVES, <http://atlanta.braves.mlb.com/atl/ball-park/suntrust-park/renderings/development-renderings/> (last visited Dec. 14, 2015).

111. See *id.*

112. Michael Buteau, *SunTrust Gets Naming Rights to New Atlanta Braves Park*, BLOOMBERG BUS. (Sept. 16, 2014), <http://www.bloomberg.com/news/2014-09-16/suntrust-banks-get-naming-rights-to-new-atlanta-braves-stadium.html>.

113. 17 C.F.R. § 240.15c2–12(a) (2014).

114. *MCDC Initiative*, *supra* note 10.

115. *Id.*

116. *Id.*

reports of material events are required.¹¹⁷ The annual financial information filing date is determined by the issuer and included in the official statement.¹¹⁸ For material events, reporting is required within ten days of the occurrence.¹¹⁹ To be considered compliant with these reporting requirements, the documents must be posted online to EMMA.¹²⁰ To assist with compliance, the MSRB also has a “Continuing Disclosure” page that describes the type of disclosures (e.g., financial information and event notices) and how they can be accessed on EMMA.¹²¹ As all municipal bonds must comply with this continuing disclosure requirement, bonds used to fund sports facilities are also subject to Rule 15c2–12.

B. Noncompliance

However, many issuers and underwriters have recently been found noncompliant. For example, in *Securities & Exchange Commission v. Dain Rauscher, Inc.* the underwriter did not investigate or disclose financial information in the bond statement.¹²² Though the lower court held the statement satisfied industry standards, the Ninth Circuit saw these standards as only one factor and reversed the summary judgment for the company.¹²³ However, no further proceedings were found. Another example can be found in *In re Allstate Life Insurance Co. Litigation*.¹²⁴ There, though the statement’s continuing disclosure agreement claimed compliance, the feasibility report was missing from the facility analysis.¹²⁵ These cases demonstrate the problem of noncompliance with Rule 15c2–12.

VI. THE SEC’S INITIATIVE

In response to this problem of noncompliance under the rule, the SEC

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Continuing Disclosure*, MSRB, <http://www.msrb.org/EducationCenter/Municipal-Market/Lifecycle/Disclosure/Ongoing-Disclosure.aspx> (last visited Dec. 14, 2015); *Continuing Disclosures*, MSRB, <http://www.msrb.org/Market-Transparency/Continuing-Disclosure.aspx> (last visited Dec. 14, 2015).

122. *Sec. & Exch. Comm’n v. Dain Rauscher, Inc.*, 254 F.3d 852, 858 (9th Cir. 2001).

123. *Id.* at 859.

124. *See generally* No. CV-09-08162-PCT-GMS, 2013 U.S. Dist. LEXIS 81912 (D. Ariz. June 10, 2013).

125. *See id.* at *8–9.

launched the Initiative for all municipal bonds.¹²⁶ This way, the bonds used in sports facility construction are included. Self-reporting is encouraged by the Initiative, and the first rounds of reporting commenced in fall 2014.¹²⁷ Favorable settlement terms are offered to those who self-report by the included deadlines.¹²⁸

A. Self-Reporting

Both issuers and underwriters are encouraged to self-report their noncompliant bonds under the Initiative.¹²⁹ Again, this includes those bonds used to fund sports facilities. For issuers, this opportunity is aimed at those who made inaccurate statements on their prior reports.¹³⁰ The underwriters of those issuers with false statements of compliance are also urged to report their participation.¹³¹ To comply with the Initiative, the self-report, via an official questionnaire,¹³¹ was due by September 10, 2014, for underwriters and by December 1, 2014, for issuers.¹³² This questionnaire asked about both the inaccurate bond statements themselves, as well as the individuals involved.¹³³ For sports facility bonds, the individuals involved may have even included team officials.

B. Settlement

After the self-reporting deadlines pass, if the SEC initiates enforcement proceedings, cooperation with the Initiative will be taken into consideration in determining repercussions.¹³⁴ As a result of participation in the Initiative, standardized settlement terms are recommended over traditional noncompliance remedies (e.g., registration suspension).¹³⁵ Such standard terms include both undertakings and civil penalties.¹³⁶ For issuers, they must undertake to establish continuing disclosure procedures within 180 days of a settlement.¹³⁷ In addition,

126. *MCDC Initiative*, *supra* note 10.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

issuers must update noncompliant filings during that same time period.¹³⁸ Furthermore, issuers are to cooperate with any further investigation into the other parties involved and must also provide the SEC with a certificate of compliance one year after a settlement.¹³⁹ However, no assurances are made under the Initiative in regard to individual liability or liability for entities that failed to self-report.¹⁴⁰ These settlements could affect sports in determining who pays—whether it is the underwriter, the city (i.e., issuer), or the team itself.

C. Examples

Given the fairly recent reporting deadlines, not many specific examples were available before the completion of this Article. Only one settlement under the Initiative was reported in detail.¹⁴¹ In July 2014, prior to the self-reporting deadline, Kings Canyon Joint Unified School District in California (the School District) was charged with noncompliance.¹⁴² The School District allegedly failed to file the required financial information and event notices under Rule 15c2-12, yet the School District included a statement of compliance during the previous five years in its bond documentation.¹⁴³ Under the Initiative, it agreed to standardized settlement terms, including a cease and desist from committing violations, an opportunity to cure the missing filings, an adoption of a new disclosure policy, an agreement to cooperate with future SEC investigations, and a disclosure of these settlement terms in its future bond statements.¹⁴⁴

Though no additional individual settlements were made available, there are numerous publications to assist attorneys in obtaining compliance with the Initiative, such as the *Considerations for Analysis* from the National Association of Bond Lawyers.¹⁴⁵ Furthermore, according to Reuters, many

138. *Id.*

139. *Id.*

140. *Id.*

141. *SEC Charges California School District with Misleading Investors*, SEC (July 8, 2014), <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542256676#.VQcN08Uo7IV>.

142. *Id.*

143. *Id.*

144. *Id.*

145. *See generally, e.g., NAT'L ASS'N BOND LAW., MCDC INITIATIVE: CONSIDERATIONS FOR ANALYSIS BY ISSUERS OF MATERIALITY AND SELF-REPORTING* (2014), http://www.nabl.org/uploads/cms/documents/MCDC_Initiative_-_Considerations_for_Analysis_by_Issuers_of_Materiality_and_Self-Reporting_8-5-14.pdf; *SEC 2014 Continuing Disclosure Initiative*, JONES HALL, http://www.joneshall.com/?page_id=499 (last visited Dec. 14, 2015).

issuers met the December 1st self-reporting deadline.¹⁴⁶ One example provided is the City of Shelbyville, Indiana, which reported a failure to file annual financial information from 2008 to 2011, though settlement was not yet reported at the time this Article was written¹⁴⁷

With the amount of noncompliance reported, the SEC planned to continue its enforcement efforts into 2015.¹⁴⁸ The Enforcement Division will release settlements in sets to avoid singling out specific violators going forward.¹⁴⁹ In addition, only a few instances of noncompliance will be included, rather than identifying all of a violator's transactions.¹⁵⁰ First, in June 2015, thirty-six underwriters agreed to settle for a total of \$9.3 million.¹⁵¹ Later, in September 2015, twenty-two additional underwriters were sanctioned.¹⁵² However, the unsettled issue of personal liability for the individuals involved needs to be addressed moving forward.¹⁵³

VII. POTENTIAL EFFECTS OF THE INITIATIVE ON THE USE OF MUNICIPAL BONDS IN SPORTS

As demonstrated above, municipal bonds are still relied on to fund sports facilities.¹⁵⁴ Given this use, the Initiative has potential to alter public funding in sports going forward. With an increase in municipal bond disclosures, such as annual financials or a change in bond rating, the Initiative may continue the trend away from public funding and towards the use of public-private

146. See Hilary Russ, *U.S. Towns, Schools Admit to Failing to Filing Financial Disclosures*, REUTERS (Dec. 1, 2014), <http://www.reuters.com/article/2014/12/02/usa-municipals-filings-idUSL2N0TL14X20141202>.

147. *See id.*

148. See Kyle Glazier, *More Individual, Secondary Market Enforcement in 2015*, BOND BUYER (Jan. 5, 2015), <http://www.bondbuyer.com/news/washington-enforcement/more-individual-secondary-market-enforcement-in-2015-1069232-1.html>.

149. John R. Regier & Breton Leone-Quick, *Current and Former SEC Officials Speak About Enforcement Issues Concerning Municipal Securities*, NAT'L L. REV. (Mar. 13, 2015), <http://www.natlawreview.com/article/current-and-former-sec-officials-speak-about-enforcement-issues-concerning-municipal>.

150. *Id.*

151. Kyle Glazier & Jack Casey, *36 Underwriters to Pay \$9.3M to Settle Under SEC MCDC Program*, BOND BUYER (June 18, 2015), <http://www.bondbuyer.com/news/washington-enforcement/36-underwriters-to-pay-93m-to-settle-under-sec-mcdc-program-1076803-1.html>.

152. *SEC Sanctions 22 Underwriting Firms for Fraudulent Municipal Bond Offerings*, SEC (Sept. 30, 2015), <http://www.sec.gov/news/pressrelease/2015-220.html>.

153. See Glazier, *supra* note 151.

154. Greenberg, *supra* note 52, at 122.

partnerships.¹⁵⁵ Though there are many economic factors that determine the public contribution to a stadium or arena,¹⁵⁶ the financial condition of a municipality and its past violations may be brought to the forefront of the Initiative's analysis.

To summarize, the Initiative seeks to enforce the rule requiring financial disclosure.¹⁵⁷ In theory, this continuing disclosure promotes transparency to protect parties on both sides of a bond transaction.¹⁵⁸ In sports, the increase in available information may reveal the poor financial condition of a municipality or its previously issued bonds.¹⁵⁹ Access to these filings could contribute to the trend away from public funding for sports facilities.¹⁶⁰ For instance, the Miami Dolphins chose private money over municipal bonds to fund its stadium renovations once it was revealed the new Marlins Park would cost Miami-Dade County \$1 billion.¹⁶¹ Thus, the trend to rely on private financing was already impacted by municipal debt.

This trend is further evidenced by the increase in entertainment districts, such as the one surrounding the new Red Wings' arena.¹⁶² With the variety of tenants (e.g., restaurants) and potential revenue streams in these areas, they may actually be a way to attract private investors in the face of shrinking public funds. Another reason to turn to private investments is the uncertainty over who will pay a settlement with the SEC. If an issuer (e.g., city, county, or stadium authority) is on the hook, it may need additional funds from taxpayers or a team to cover any civil penalties. Such an increase in funds will only contribute to the growing problem of municipal debt, and, thus, less public financing will be available for stadium construction or renovation.

Although the Initiative could impact sports facility funding, it is important to note stadiums and arenas are still being constructed, such as those referenced in this Article.¹⁶³ Though there is little data on the positive effects of new construction,¹⁶⁴ public support for these projects remains. That being said, the cities building multiple new facilities are relying more on a mixture of public

155. *See MDCDC Initiative, supra* note 10.

156. *See generally, e.g., Zimbalist, supra* note 79.

157. *MDCDC Initiative, supra* note 10.

158. *See About EMMA, supra* note 43.

159. *E.g., Hanks, supra* note 95.

160. *See GREENBERG, supra* note 50, at 151.

161. Hanks, *supra* note 95.

162. Shea, *supra* note 106.

163. *E.g., New Stadium Q&A, supra* note 53.

164. *See generally e.g., Zimbalist, supra* note 79.

and private funds.¹⁶⁵

VIII. CONCLUSION

As discussed, municipal bonds are securities issued by a city, town, or county to fund public projects, such as highway construction.¹⁶⁶ The bonds can be general obligation bonds, and tied to taxes, or revenue bonds, and repaid from income generated by a project itself.¹⁶⁷ Such general obligation and revenue bond issuances are governed by both the SEC and MSRB, and bond filings can be accessed online on EMMA.¹⁶⁸

In sports, municipal bonds are often used to fund facility construction.¹⁶⁹ New stadiums or arenas can use purely public funds or a combination of public and private financing.¹⁷⁰ Though the positive effects of sports facilities on surrounding communities may be uncertain,¹⁷¹ they are championed by a municipality to elicit public support.¹⁷² As costs increase, there is a trend towards the use of more private funds.¹⁷³ One instance of this public-private partnership financing model is Levi's Stadium, whose \$1.31 billion cost only contains 60% municipal bonds, rather than a full 100%.¹⁷⁴

In response to noncompliance with disclosure requirements under Rule 15c2-12, the SEC launched the Initiative.¹⁷⁵ The Initiative invites self-reporting of such violations via an online questionnaire.¹⁷⁶ According to the SEC, self-reporting submissions are met with favorable settlement terms.¹⁷⁷ With the amount of reports submitted thus far, enforcement is expected to continue this year.¹⁷⁸ Issues including the amount of settlement and potential personal liability for officials involved are also yet to be determined.¹⁷⁹

165. *See, e.g.*, Buteau, *supra* note 112 (illustrating the Atlanta Braves and Falcons as examples).

166. *Investor Bulletin*, *supra* note 6.

167. *Id.*

168. *See, e.g.*, EMMA, *supra* note 27.

169. *See* GREENBERG, *supra* note 50, at 150-51.

170. *Id.* at 151.

171. *See generally e.g.*, Zimbalist, *supra* note 79.

172. *See, e.g.*, *Economic Impact*, *supra* note 71.

173. *See* GREENBERG, *supra* note 50, at 151.

174. Coté, *supra* note 4.

175. *MCDC Initiative*, *supra* note 10.

176. *Id.*

177. *Id.*

178. Glazier, *supra* note 148.

179. *Id.*

As municipal bonds are used in sports, the introduction of the Initiative has potential to impact their use going forward. Given the escalating construction costs and the possibility of default,¹⁸⁰ it is likely that the trend towards private funding will only continue. If the increased disclosure reveals additional financial troubles or settlement terms require the payment of civil penalties, the Initiative may increase this trend in sports facility financing given the existing amount of municipal debt.

To conclude, the future implications of this analysis and the trend away from public funding are supported by the amount of municipal defaults recorded in 2014,¹⁸¹ as well as the enforcement plans of 2015.¹⁸² Additionally, as the representative facilities discussed in this Article complete construction, they are likely to incur increased costs¹⁸³ and repayment terms.¹⁸⁴ Furthermore, additional cities have proposals currently in the works, such as Los Angeles¹⁸⁵ and Buffalo.¹⁸⁶ As a result, though stadium and arena construction will only continue, the question remains whether they will rely on public funds given the conditions of municipal budgets, as revealed through the disclosure required by Rule 15c2–12 and enforced by the Initiative.¹⁸⁷

180. *E.g.*, Kuriloff & Preston, *supra* note 74.

181. Robert Slavin, *Defaults Reached Record in 2014*, BOND BUYER (Jan. 13, 2015), <http://www.bondbuyer.com/news/markets-buy-side/defaults-reached-record-in-2014-1069491-1.html>.

182. Glazier, *supra* note 148.

183. *See, e.g.*, Coté, *supra* note 4.

184. *E.g.*, Hanks, *supra* note 95.

185. Brent Schrottenboer, *L.A. Stadium Project Moving Forward with Consultant*, USA TODAY (Jan. 15, 2015), <http://www.usatoday.com/story/sports/nfl/2015/01/14/st-louis-rams-los-angeles-stadium-stan-kroenke-inglewood/21777435/>.

186. Jerry Zremski, *State Study Focuses on Three Buffalo Sites for Bills Stadium, as Well as the Ralph*, BUFFALO NEWS (Jan. 18, 2015), <http://www.buffalonews.com/city-region/state-study-focuses-on-three-buffalo-sites-for-bills-stadium-as-well-as-the-ralph-20150118>.

187. *See MCDC Initiative*, *supra* note 10.