



CDIAC

**CALIFORNIA
DEBT AND
INVESTMENT
ADVISORY
COMMISSION**

THE PROCESS OF GOOD DISCLOSURE

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INITIAL DISCLOSURE

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- **Rule 10b-5: Employment of Manipulative and Deceptive Practices:**

“It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,(a) To employ any device, scheme, or artifice to defraud,(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.”
- **During debt transactions**
 - Preliminary and Final Official Statements
 - Offering Memoranda
 - Remarketing Circulars

CONTINUING DISCLOSURE

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- ❑ Secondary market
- ❑ SEC Rule 15(c)2-12 under the Securities Exchange Act
<http://www.sec.gov/rules/final/adpt6.txt>
- ❑ Annual Report
- ❑ Disclosure of reportable events
- ❑ Amendments to Rule 15c2-12 effective 12/1/10
- ❑ Voluntary disclosures

GOOD DISCLOSURE – IT'S IN THE PROCESS

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- ❑ Gather, review and reconcile disclosure information
- ❑ Work with the finance team to create the most effective, accurate and complete offering document
 - Consider the needs of your investors
 - Look forward when undertaking continuing disclosure obligations
 - Take a fresh look at disclosure issues – materiality is an ever-evolving concept
- ❑ Maintain source information to facilitate future debt issuances
- ❑ Coordinate approvals
- ❑ Remember – The Content is the Issuer's Responsibility

THE PROCESS CONTINUES AFTER THE DEAL CLOSES

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- ❑ Develop internal controls and procedures
- ❑ Be sure to have internal controls and procedures “year round”, i.e., not only during the debt issuance process
- ❑ Include regular training for staff and elected officials

MUNICIPAL DISCLOSURE IN THE ELECTRONIC AGE

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- ❑ Electronic Dissemination of Information
- ❑ Electronic Bidding, Communications and Document Exchange
- ❑ EMMA - <http://www.emma.msrb.org/Home>
- ❑ Issuers' Investor Relations Websites

WHAT HAPPENS WHEN ISSUERS DO NOT PROVIDE GOOD DISCLOSURE?

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- ❑ Offering documents must contain disclosure of non-compliance for five years
- ❑ See: State of New Jersey order
<http://www.sec.gov/litigation/admin/2010/33-9135.pdf>
- ❑ See: State of Illinois order
<http://www.sec.gov/litigation/admin/2013/33-9389.pdf>
- ❑ See: Numerous other enforcement actions reported on the SEC's website

RECURRING DISCLOSURE ISSUES

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- ❑ Financial statements must be accurate
- ❑ Issuer certifications must match the facts
- ❑ The POS, OS and Annual Financial Information are the Issuer's documents and the Issuer cannot rely solely on the professionals
- ❑ Public officials:
 - May not recklessly disregard disclosure of misleading facts
 - Should become familiar with offering documents and question staff about disclosure
- ❑ Issuers should encourage orderly and regular communication between staff and professionals
- ❑ Issuers should implement internal controls to ensure compliance with federal securities law

- For additional information, contact:

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Important Note:

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