

**CDIAC**

**CALIFORNIA  
DEBT AND  
INVESTMENT  
ADVISORY  
COMMISSION**

# THE CONTINUING DISCLOSURE UNDERTAKING AND ONGOING COMMUNICATION WITH THE MARKET

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# Session Outline

- Overview of Rule 15c2-12
- Operational Considerations
- Market Communication
- Voluntary Disclosure Discussion

# Overview of Rule 15c2-12



# Rule 15c2-12

- Basic Requirement for Continuing Disclosure Agreement
- Content of Annual Report
- Event Notices
- Obligation to Report Prior Failures in Offering Documents (MCDC)
- “Speaking to the Market”

# Basic Requirement for CDA

**“A Participating Underwriter shall not purchase or sell municipal securities** in connection with an Offering unless the Participating Underwriter has reasonably determined that an issuer of municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement has undertaken, either individually or in combination with other issuers of such municipal securities or obligated persons, in **a written agreement or contract** for the benefit of holders of such securities, to provide the following to the Municipal Securities Rulemaking Board in an electronic format as prescribed by the Municipal Securities Rulemaking Board, either directly or indirectly through an indenture trustee or a designated agent:

(A) **Annual financial information** for **each obligated person** for whom financial information or operating data is presented in the final official statement, or, for each obligated person meeting the objective criteria specified in the undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final official statement, except that, in the case of pooled obligations, the undertaking shall specify such objective criteria;

(B) If not submitted as part of the annual financial information, then when and if available, **audited financial statements** for each obligated person covered by paragraph (b)(5)(i)(A) of this section..”

# Content of Report

- “The term **annual financial information** means **financial information or operating data**, provided at least annually, **of the type included in the final official statement** with respect to an obligated person, or in the case where no financial information or operating data was provided in the final official statement with respect to such obligated person, of the type included in the final official statement with respect to those obligated persons that meet the objective criteria applied to select the persons for which financial information or operating data will be provided on an annual basis. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents available to the public on the Municipal Securities Rulemaking Board's Internet Web site or filed with the Commission.”
- Should anything else be included that isn't in the specific updates included in the Annual Report or the Audited Financials? (Discussed in “Speaking to the Market.”)

# Event Filings

“(C) In a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the securities being offered in the Offering:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (7) Modifications to rights of security holders, if material;...

(continued on next page)

# Event Filings (cont.)

(8) Bond calls, **if material**, and tender offers;

(9) **Defeasances**;

(10) Release, substitution, or sale of property securing repayment of the securities, if material;

(11) **Rating changes [!!!!!!!]**;

(12) Bankruptcy, insolvency, receivership or similar event of the obligated person;

(13) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) Appointment of a successor or additional trustee or the change of name of a trustee, if material; and

(D) In a timely manner, **notice of a failure** of any person specified in paragraph (b)(5)(i)(A) of this section to provide required annual financial information, on or before the date specified in the written agreement or contract.”



# Obligation to Report Failures to Comply with Prior CDAs

The term *final official statement* means a document or set of documents prepared by an issuer of municipal securities or its representatives that ..... sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data .....; and a description of the [continuing disclosure] undertakings ....., if applicable, and **of any instances in the previous five years in which [the issuer] failed to comply, in all material respects, with any previous [continuing disclosure] undertakings...**

# “Speaking to the Market”

- Federal Securities Law implications can arise outside the context of Official Statements:
- Public statements by officials -- depends on (i) the official making the statement, (ii) the information presented, and (iii) the audience.
- Investor website
- Annual Report

# Operational Considerations



# Annual Information Sources

- ❑ Financial
- ❑ Environmental
- ❑ Social

# Annual Information Sources

## Financial

- Will I have audited financials in time to meet disclosure deadlines? If not do I have unaudited that I'm comfortable with?
- Are my data sources reliable?
- Am I maintaining a consistent format that's easy to reference?

# Annual Information Sources

## Environmental

- Has flood, fire, earthquake, drought impacted bonded projects or facilities?
- Has global warming had any impact on my bonded infrastructure?
- Have any facilities financed with lease revenue bonds been temporarily unavailable (i.e., has an abatement event occurred)?

# Annual Information Sources

## Social

- Was the Mayor's speech properly presented in the media?
- Are the rumors true?

# Listed Events

- How many bonds have you issued after 12/1/2010?
- Who decides what is material? How is this documented?
- How are voluntary disclosure items vetted?
- Who monitors and communicates events?



# Operating Procedures

- What does the CDA require?
- Does your “disclosure team” have representatives from all information sources?
- Who is the ultimate gatekeeper?
- How do the people who *know* communicate with the people that *do*?
- What is your succession plan?
- Pros and Cons of engaging a third party.

# Market Communication



# Annual Disclosure Reporting

Are you presenting concise, coherent, easy to follow information or are you posting financials and expecting investors to *figure it out*?

# Annual Reporting

- Does the report contain all information required by the CDA?
- Is the report format consistent year over year?
- Does staff know how to locate third party data?
- Is data available in sufficient time to meet the filing due date?
- Is staff sufficiently trained to produce accurate and timely reports?

- What staff members are responsible for being familiar with EMMA?
- What are the contingencies for technology failures on due dates?
- Has the opportunity for a website link on EMMA been explored?
- If outsourcing to third party, who is responsible for verifying timely uploads to EMMA?

# Websites and Social Media

- Does your agency maintain an Investor website?
- How are emails monitored for disclosure related information of interest to investors?
- Do any agency employees or elected officials use twitter?
- Does your agency have a Facebook page and are postings vetted for disclosure related items?

# Investor Calls

- Who is available to answer the phone?
- How is this person vetted?
- What hours is phone assistance available?
- What is the Agency tolerance level for transferring calls?
- Tact vs Fact

# Voluntary Disclosures





# Discussion Topics

- ❑ Bank Loans
- ❑ Variable Rate Debt
- ❑ Burdensome CDA Language
- ❑ Substantial Project Deterioration
- ❑ Climate Change
- ❑ Terrorist Attack