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## Understanding Municipal Securities Regulations

# **GOOD DISCLOSURE: IT'S IN THE PROCESS**

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# Good Disclosure: It's In the Process

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- A. Preliminary Considerations for the Process
- B. Preparing Disclosure Documents
- C. Disclosure: What Investors Want and Why They Want It

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## A. Preliminary Considerations for the Process

- Objectives of Good Disclosure
- Structuring the Process

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## A. Preliminary Considerations for the Process

- Objectives of Good Disclosure

- comply with legal requirements
- full and accurate information
- establish and maintain good investor relations

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## A. Preliminary Considerations for the Process

- Structuring the Process
  - for all debt issuance of the Issuer
    - establish policies
    - establish standing committee or committees

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- Structuring the Process

- deal-specific process

- determine what's being financed
- identify participating Issuer staff
- identify/select outside professionals
- identify scope and sources of material information

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- Structuring the Process

- deal-specific process

- for continuing disclosure, determine
  - contents of annual reports
  - deadline and procedure for disseminating annual reports
  - Whether deal involves an “obligation person” – need separate undertaking
- establish financing schedule

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## B. Preparing Disclosure Documents

- Assembling the Participants
- Official Statement (Initial Market Disclosure)
- Continuing Disclosure (Secondary Market Disclosure)

# Assembling the Participants

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- A. Issuer
  - B. Financial Advisor
  - C. Issuer Counsel
  - D. Bond Counsel/ Disclosure Counsel
  - E. Underwriter
  - F. Underwriter Counsel
  - G. Special Study Consultant
  - H. Auditor
- A. Provides financial data and economic forecasts.
  - B. Helps select which information is to be disclosed and provides editorial advice
  - C. Ensures that the interests of the issuer are protected in all disclosure/contracts.  
Ensures official statement is accurate and reflects current state of issue.
  - D. Drafts bond documents, preliminary official statement, official statement, and final official statement.
  - E. Regulatory compliance  
Structures, markets, underwrites and distributes bonds to the market. Assumes underwriting risk.
  - F. Compliance with securities and disclosure laws
  - G. Provides key project analysis, which bonding capacity is based.
  - H. Third Party confirmation of issuer's accuracy with regard to its filed financial statements (CAFR and Continuing Disclosure).

# Official Statement (Initial Market Disclosure)

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- Contents

- Introductory Statement (Cover)
- Plan of Finance
- Sources and Uses of Fund
- The Bonds
- Security for the Bonds
- Project Description
- Tax Matters
- Risk Factors
- Continuing Disclosure
- Underwriting
- Ratings

- Appendices

- Economic/ Demographic information on project issuer/ region
- Audited Financial Statements
- Summary of Certain Provisions of the Trust Indenture

## Responsible Party

Disclosure Counsel  
Issuer, FA, Underwriter  
Underwriter  
Bond Counsel/Underwriter  
Issuer, Bond Counsel  
Issuer  
Bond Counsel  
Bond Counsel, Special consultant,  
Underwriter  
Issuer, Bond Counsel  
Underwriter/ Bond Counsel  
Underwriter

Special Consultant

Auditor

Bond Counsel

# Official Statement Due Diligence

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- The Due Diligence process enables the underwriter to ask questions and seek clarification about the issue, project and credit.
  
- The steps include:
  1. Prepare a list of questions
  2. Determine issuer participants
  3. Schedule a meeting/ call
  4. Review issuer's financial/ demographic information provided

# Official Statement -The Reiterative Process

## Develop Structure

- Finance team establishes initial disclosure
- Underwriter provides information on preferences of rating agencies, credit enhancers and investors
- Financing team considers such information through structuring process

## Draft P.O.S

- Underwriter reviews issuer information and bond structures
- Underwriter speaks with rating agencies, credit enhancers and investors to obtain preferences/needs based on current market conditions
- Rating agencies, credit enhancers and investors review issuer disclosure and ask for clarification or seek more information
- Financing team reflects certain needs/preferences or requests in POS

## Bond Sale and Final Disclosure

- Late developments concerning bond issuer or structure disclosed
- Final official statement reflects bond structure and any updated issuer disclosure

# Continuing Disclosure (Secondary Market Disclosure)

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- We are in an unprecedented municipal environment which has experienced numerous significant events in the past 12 months:
  - Credit Concerns and Deterioration
  - Bond Insurer Instability/ Downgrades
  - Failed Auctions/ Draws on Liquidity Lines
  - Reduced availability of cost effective LOCs and liquidity lines
  - “Collapse” of a Major Wall Street Firm
  - “Top 2” Municipal Bond Firm “Closes Shop”
  - Reduced Municipal Commitment from many Bulge Banks: Personnel & Capital
  
- Underlying credit ratings, transparency, governance are increasingly important without insurance providers able to homogenize the credits.
  
- Continuing disclosure is an increasingly important factor, enabling issuers to achieve the most aggressive rates.
  
- Strong management that frequently considers and addresses investor relations and concerns will likely be rewarded with lower borrowing rates because risk/ uncertainty is reduced.

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## C. Disclosure: What Investors Want and Why They Want It

- Investors want as much information as possible to make an informed investment decision
- Institutional investors are, in effect, lending shareholder money and need to feel certain of repayment

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- Official Statement

- should include same information as is being provided to rating agencies
- Issuers in the market on the same day with same rating – may get different bids depending on levels of disclosure
- history of good disclosure practices (e.g., timely filing of continuing disclosure reports) may affect pricing of a new deal

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## ● Continuing Disclosure

- the continuing disclosure undertaking creates a legal obligation to file:
  - annual reports, and
  - notices of material events when they occur and are deemed material

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- Continuing Disclosure

- continuing disclosure documents – should be complete and timely filed
- if annual report not ready on time – file notice indicating when the report will be available

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- Institutional Investors – required by

- federal regulation, and

- their fiduciary responsibility to their shareholders

to make independent evaluations of a security prior to acquiring it and while it is held

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- Importance of Issuer's "on-going dialogue" with the market

- great way to improve liquidity of Issuer's debt

- the recurring theme of timely filings

- website posting of information

- conference calls with investors