

**CDIAC**

**CALIFORNIA  
DEBT AND  
INVESTMENT  
ADVISORY  
COMMISSION**

# FINANCE OFFICERS IN TODAY'S MARKET

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Debt 3:  
Debt Administration

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Oakland, California

# Disclosure Reporting Requirements

- **Rule 15c2-12 (the “Rule”)**
  - » Became effective in July 1995
  - » Requires issuers to obligate filing of annual financial information and notices of material events to improve disclosure in the secondary market
  
- **All non-exempt municipal issuers with aggregate debt of \$1,000,000 or more and that have issued at least one debt offering in the par amount of \$1,000,000 or more are required to:**
  - » Prepare and file updated annual financial information
    - Generally within 6 to 9 months of their fiscal year end
  - » Provide notices of material events
  - » File documents with the MSRB and state depository (if applicable) each year for as long as the obligated debt remains outstanding

# EMMA - Electronic Municipal Market Access

- **SEC modified Rule 15c2-12 effective July 1, 2009**
  - » Eliminated previous NRMSIRs (Nationally Recognized Municipal Security Information Repository) and SIDs (State Information Depository) as official repositories for secondary market disclosure documents and material events
  - » Created a central repository for all municipal issuers (EMMA)
  - » The MSRB via the EMMA system is the sole “NRMSIR”
  - » [www.emma.msrb.org](http://www.emma.msrb.org) is a free online system operated by the MSRB
  - » The MSRB requires that documents be filed in word-searchable PDF format
  - » Past disclosure obligations must be honored until expired (e.g. SID)
  - » Past disclosure filings available at previously designated NRMSIRs

# SEC Modified Rule 15c2-12

- **Effective December 1, 2010**
  - » Material Events increased from 12 to 16
  - » Materiality determination was removed for certain material events
  - » Material Events must be filed within 10 business days of occurrence
  - » The Rule was expanded to include additional types of municipal securities
    - Variable Rate Demand Obligations (“VRDOs”)
  - » SEC reaffirmed underwriters’ responsibilities to have a reasonable basis for recommending any municipal securities

# Required Material Events

*The following must be filed regardless of materiality:*

1. Principal and interest payment delinquencies
2. Unscheduled draws on debt service reserves reflecting financial difficulties
3. Unscheduled draws on credit enhancements reflecting financial difficulties
4. Substitution of credit or liquidity providers, or their failure to perform
5. Adverse tax opinions
6. Defeasances
7. Rating changes
8. **The issuance by the IRS 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 securities\***
9. **Tender offers\***
10. **Bankruptcy, insolvency, receivership or similar proceeding\***

**\*Newly required material events for issuances on or after December 1, 2010**

# Required Material Events

*The following must be filed if deemed material:*

11. Non-payment related defaults
12. Modifications to rights of security holders (changes to bond covenants or the continuing disclosure agreement)
13. Bond Calls
14. Release, substitution, or sale of property securing repayment of the securities
- 15. Mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the obligated person or their termination\***
- 16. Appointment of a successor or additional trustee or the change of the name of a trustee\***

**\*Newly required material events for issuances on or after December 1, 2010**

# What Type of Debt Obligations are Exempt?

- **Exempt from disclosure filing requirements:**
  - » Bond or note offerings with a par amount of \$1 million or less
  - » Bond or note offerings issued in denominations of \$100,000 or more, if:
    - Sold to no more than 35 persons deemed capable of evaluating risk
    - Maturity of 9 months or less
- **Exempt from filing annual information ONLY but not material event notice disclosure:**
  - » Issues maturing within 18 months (i.e. interim financings/cash flow obligations)

# What Type of Debt Obligations are Exempt?

- **Issuers with less than \$10 million in aggregate debt outstanding**  
**“Small Issuer Exemption”**
  - » Must provide annual financial information that is “customarily prepared and publicly available” (e.g. audited financial statements only)
  - » Material Event Notice disclosure
  - » Prior to July 1, 2009 issuers could choose to provide information upon request or to the SID only
    - This requirement still applies until the older issues are expired

# Consequences of Non-Compliance

- According to the Rule, underwriters/institutional investors cannot bid on transactions until all required information is filed and a notice of late filing (if applicable) is made
- Non-compliance language must be included in any public offering documents for five years
- Serious or ongoing non-compliance issues could limit access to the capital markets, which may increase borrowing costs
- Serious non-compliance could also lead to lower bond ratings or negative rating actions
- Inaccurate statements in the offering documents is considered securities fraud

# Stories of Non-Compliance

- San Diego and NJ – misleading pension fund info
- Harrisburg, PA – failure to file disclosure & misleading info on websites
- West Clark Community Schools
  - » Falsely told investors it was in compliance with 2007 transaction in filing CAFR
  - » SEC fined District \$580,000
- New Mexico Finance Authority
  - » Had to call off \$40.4 million issue
  - » Discovered phony audit had been used and posted on issuer website and most recent bond offering

# “Only as Good as the Company you Keep”

- MSRB report on disclosures made to EMMA btw Jan. 10 and June 13
  - » CAFR disclosed on average of 188 calendar days after end of issuers’ fiscal year
  - » Issuers took an average of 202 calendar days after end of fiscal year to disclose CAFR
- According to Merritt Research Services (2012)
  - » State issuers were most often late in completing their audits - median 174 days
  - » Local governments completed their financials quicker on average – 171 days for cities and 172 for counties
- CDIAC CAFR Filings – Test of Compliance Among CA Issuers (11-04)

# Developments in Municipal Disclosure

- **Increased Disclosure for Greater Transparency:**
  - » OPEB Liabilities (GASB 45)
    - Significant health care costs that impact Issuer's financial position
  - » More Recently:
    - Insurance or enhancement provider credit rating and outlook (e.g. AMBAC)
    - MSRB encouraging voluntary disclosure of other information (bank loans, private placements, etc.)
    - Increased enforcement (recent cease-and-desist orders, fines, adverse court opinions, etc.)
    - Greater enforcement consistently suggested by SEC (e.g. 3 strike system for frequent non-compliance, frequent late filers, e.g. bond disclosure covenants)

Thank you