



WEBINAR TRANSCRIPT

Annual Municipal Disclosure Training

October 14, 2025 | 10:00 AM – 11:30 AM

Understanding disclosure responsibilities and the risks of disclosure failures is critical for agency officials that are directly involved in debt issuance, but also for those that contribute to disclosure intermittently or are in a position to “speak to the market.” This webinar will focus on the elements of an effective disclosure organization such as disclosure working groups, policies and procedures, and training, and will provide context for elected officials and other non-financial staff as to their role in the disclosure process. Speakers will share practical insights from their experiences including lessons learned from handling topical disclosure issues.

Editor’s Note: This transcript has been prepared by the California Debt and Investment Advisory Commission (CDIAC) and it believes it to be a fair and accurate reproduction of the comments of the speakers. Any errors are those of CDIAC and not the speakers.

Slide 1 – Annual Municipal Disclosure Training Webinar

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ROBERT BERRY: Good morning, everyone. Welcome to *Annual Municipal Disclosure Training*, a webinar produced by the California Debt Investment Advisory Commission. I'm Robert Berry. I'm the Executive Director here at CDIAC. Strong disclosure policies and procedures set out the agency's disclosure responsibilities, including the type, form, and timing of information to be disclosed, the personnel involved, the procedures to monitor and evaluate information for disclosure, and the process to ensure that timely, complete, and accurate information is available to the entire market.

As you will hear today, strong disclosure policies are step one on the path to becoming an effective disclosure organization or maintaining your status as such. But to be truly effective, policies and procedures must be operationalized, maintained, and made part of the organizational culture, and periodic disclosure training is critical to create an organizational disclosure mentality. Again, you'll hear about the importance of training today, but in short, it reminds everyone in the enterprise that may be part of the disclosure information chain of their specific roles and responsibilities, their significance, and the risk of disclosure failures. Training also brings everyone up to a baseline of understanding what disclosure really means and helps to create an enterprise-level disclosure mindset.

Today's webinar is intended to provide you and your colleagues with an annual assembly point around the topic of disclosure, where best practices will be discussed by very experienced experts that I expect will help put or keep your agency on the path to becoming an effective disclosure organization. The program will begin with the legal foundations and fundamental elements of good disclosure practices and policies across your enterprise. But beyond the fundamentals, our presenters will share actionable strategies and tips for effective policy implementation. What this program will not do is be able to address specific circumstances your agency faces, specific and individual risks, materiality judgments, policies, and organizational financial structure. As our presenters will discuss, you'll want to consider periodic training that can account for these distinctions in your agency, be more customized, and especially if you're a frequent issuer.

Periodic disclosure training is more effective if those that are at the center of the disclosure process, the finance staff, are engaged in the training along with agency officials, that are contributors or perhaps tangential to the



disclosure process, and others that may talk publicly about the agency's financial condition, like communication staff or elected officials. It provides you with the opportunity to have a third party convey objectively the importance of disclosure to some in the organization that may not always take disclosure seriously now.

I encourage you to take advantage of the webinar replay opportunity as a tool for you to bring along those in your agency that should have attended today but maybe couldn't for a variety of reasons. Before I introduce our faculty team and we get started, allow me to quickly run down some of our standard webinar housekeeping items.

Slide 2 – Housekeeping

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ROBERT BERRY: The slides are posted on the event page on CDIAC's website—that's where you registered. It's accessible from the front page of CDIAC's website or the link listed on the screen. Questions and poll answers are submitted through Slido. That's the app on the right side of your screen. Inside the app, you'll see a tab for questions and one for polls. You may submit questions at any time during the program, and I'll pose them to our presenters during our Q and A period. Click on the poll tab as the poll questions come up in the program. If you need to re-open Slido, click on the app icon pictured on the screen.

If you would like captioning, there's a captioning button, a small one, down the lower left of your screen. If you participate in 70% of the webinar, we'll send you a certificate of attendance in a couple of weeks. Also, in two weeks, we'll make a full replay of the program available on CDIAC's Education Portal.

We'll send you a notification and a link when it's plugged into the Portal and ready to view. So again, the replay is a great way to bring along those not able to attend today. The education portal is free. The content is on-demand, and it also provides a certificate of completion. Lastly, if you have technical issues, visit Webex's Help Center at the link on the screen.

Slide 3 – Speaker Introductions

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ROBERT BERRY: So now I'd like to welcome and introduce our three distinguished faculty presenters. First, we have Dan Deaton, partner with Nixon Peabody. Dan is in the public finance group of Nixon Peabody, where he represents governmental agencies, nonprofits, underwriters, and others as bond, disclosure, and underwriter's counsel in a wide variety of public finance transactions. Dan is a recognized thought leader on municipal disclosure nationally and has been a trusted advisor to CDIAC for many years, and also a frequent presenter for CDIAC on disclosure topics.

Joining Dan is Jacqui Jennings, partner with ArentFox Schiff. Jacqui is a partner in the firm's San Francisco office and has more than 25 years of experience serving as bond, disclosure, underwriters, and issuers counsel in a broad range of municipal financings. Jacqui has also been a trusted advisor to CDIAC for many years and has contributed to many projects and serves as a frequent presenter at our education programs.

Then, rounding out our team for today is Nikolai Sklaroff, Capital Finance Director for the San Francisco Public Utilities Commission. Nikolai is responsible for developing, implementing, and administering the Commission's capital finance activities over its water, wastewater, and power enterprises. Nikolai has over 30 years of public finance experience working as an investment banker, ratings analyst, financial advisor, and municipal finance



director. Nikolai also serves as a current CDIAC commissioner who was appointed in December of 2022 by Treasurer Fiona Ma.

Slide 4 – Cultivating Effective Disclosure Organizations

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DANIEL DEATON: The goal of today is to talk about the various elements that are necessary to cultivate an effective disclosure organization within the municipal issuers as they approach their disclosure documents. Trista, next slide.

Slide 5 – First: The Basics

0:06:06

DANIEL DEATON: We're going to break this presentation down into two different parts. First, we're going to talk just about some of the legal basics that go into the legal structures that we're solving to, in determining that we're going to cultivate an effective disclosure organization, and we're going to break this down into four categories. We're going to talk just about what the federal antifraud laws address, which we will explain first, and then, what we'll talk about is the SEC's remarkable enforcement activity that is going on with the municipal market, what are they concerned about, what problems they are trying to solve. Then third, we're going to talk about what steps municipal issues should take in order to stay on track with all of this. And then, we want to talk just a little bit about secondary market disclosure at the end of this topic. Trista, next slide.

Slide 6 – The Federal Antifraud Laws

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DANIEL DEATON: Very generally, the municipal issuers in their offerings are not subject to laws like corporate issuers are subject to. The SEC doesn't get to tell municipal issuers what they have to put into their disclosure documents or approve the documents before they go out to sell their bonds like corporate issuers do. However, we are subject to the federal antifraud laws. The federal antifraud laws are a broad, principle based set of laws that very broadly state that municipal issuers are required to use reasonable care to ensure that all of the information they prepare in connection with their bond offerings are, one, materially accurate, and then two, do not omit a material fact that makes that information misleading. Trista, next slide.

Slide 7 – The Federal Antifraud Laws (cont. 2 of 3)

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DANIEL DEATON: The federal antifraud laws can sound similar to basically saying don't lie, but the federal antifraud laws are far regulated far broader net of activity than that in the sense that they are, one, they don't just cover misstatements and evaluate the totality of the statements in light of what is said to make sure that they are not just accurate, but make sure that they are not misleading by what is left out of those statements. Then the second thing is that securities fraud can happen even if the person is not intentionally trying to deceive someone. Securities fraud can happen if somebody is just not exercising reasonable care in how they're putting together their statements. Trista, next slide.

Slide 8 – What is Material?

0:08:35

DANIEL DEATON: Materiality is a big concept that we use in our practice of disclosure: what is material and what is not material. The federal antifraud laws govern what is materially accurate and what material facts need to be put into disclosure in order to avoid them to be misleading. The standard of materiality in the securities laws was defined by a key Supreme Court case, *Basic, Inc. v. Levinson* (1988). In that basic Supreme Court case, it



gives us a lot of very solid guidance about what materiality consists of. First, it needs to consist of substantial likelihood. In other words, we're not talking about theoretical possibilities. Number two, it needs to be viewed by the reasonable investor as having significantly altered the total mix of information that are made available. The key here is that what we're trying to find are those facts that exist within a municipal issuer's credit that a reasonable investor, an objective investor, is going to consider to be important in making an investment decision. It is a holistic analysis, it's a totality analysis, and it is not a theoretical analysis. But this standard is the one that we consistently apply across the board in disclosure.

Slide 9 – The Federal Antifraud Laws (cont. 3 of 3)

0:10:03

DANIEL DEATON: The final point we would just make is that the SEC has been very clear that issuers are primarily responsible for the content of their disclosure documents. Underwriters are not responsible primarily for them, they have their own duties and their own responsibilities. The lawyers are not primarily responsible. The issuer itself is primarily responsible.

Jacqui, when we've provided these overview of the different federal antifraud laws, what are some of the bigger misunderstandings that you've run into about the federal antifraud laws?

JACQUELYNNE JENNINGS: A number of issuers, because you've assembled this august body of outside experts, they think that they know what they're doing, they do this every day, we don't, and there is always the possibility that there is some material information that has been missed. But as the outside people, we don't know. We know your organization on a certain level, but you live it and breathe it every day. I've actually heard in meetings some issuers saying, "I thought you were going to do that. I thought you're responsible for that." You need to help us. You need to tell us because, as this slide actually states, you, the issuer, are primarily responsible for the content of the official statement. We, the outside professionals, are there to help you put it together in an organized fashion so that it reads well and to point out areas that we think might need some more explanation.

DANIEL DEATON: Okay, good. Nikolai, a lot of the words that we just use are pretty funny sounding words. We lawyers use pretty funny sounding words when we describe things. Sometimes it's best that somebody that has the amount of experience in our marketplace from the finance perspective, the explanations that the non-lawyers give are some of the better explanations of what people are supposed to do. What would be your finance officer to finance officer explanation of what these laws mean for local issuers?

NIKOLAI SKLAROFF: Thanks, Dan. I first want to just say I'm grateful to be added to the Dan and Jacqui show here as the issuer representative, but Dan and Jacqui are really the experts. To those on my team who I encouraged to attend and everyone in my network who I encouraged to attend this session, because I told you how great the speakers were before I knew I was going to be joining these great speakers.

Dan, back to your question, I have been in business for a long time. I've had the good fortune of working not only as an issuer producing the disclosure, as an investment banker, as the regulated entity, but also as a rating analyst who therefore wasn't an end user of this information. Yet still, I approached this after many years with a lot of humility. I'm not here because I've had it all figured out and want to say "do what we've done." I tend to worry a lot and think about this stuff at 03:00 AM in the morning, and every time I talk to Dan and Jacqui, it makes me lose a lot of sleep. I would encourage everyone on this presentation to approach this with humility



and use this as an opportunity, a safe opportunity, to really self-examine how you work within your organization because I think the most important thing that these laws tell me is that, while I know bonds, I don't have all the answers for the disclosure process. First, this is very serious where we tend to be very siloed in our organization, and it's really about making sure that we engage and have all the parties at the table who can help answer this set of questions.

DANIEL DEATON: Okay, great. Next slide.

Slide 10 – What is the SEC Concerned With?

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DANIEL DEATON: About 20 years ago or so, the SEC before that had really not paid that much attention to our marketplace. There had been a few crises that they had come in and they had been very involved with. But about 20 years ago or so, the SEC really woke up to unique problems in the municipal securities market. It really came down to a combination of how state and local government could actually violate the federal antifraud laws and actually could hurt investors in ways that were not very intuitive to the municipal securities market.

The way that the SEC had approached it before that point was that the municipal securities market was not like the corporate market. It did not have the incentives of greed and the kind of things that motivate, oftentimes, bad behavior within the corporate securities market. It didn't really need to be tended like the corporate market needed to be tended to. 20 years ago, the SEC realized that while there was truth to that—that the incentives within the corporate market are not found in the municipal market—and while that the kind of behavior that would then incentivize is not the same, and I think they still believe that, the municipal securities market has its own unique challenges, its own unique problems as a result of the structure and purpose of local government. Here were some of the problems that they ran into, that they intentionally tried to solve. One was the “silo” effect: that state and local government are organized into silos, and right hand, oftentimes, doesn't talk to the left hand. Second, internally rather than externally focused: local government is structured so that if you care about the things that we're talking about, show up and make your voices known. Whereas the federal antifraud laws required issuers to affirmatively understand the perspective of a reasonable investor whether they show up or they don't show up at all. A lack of training: just a lack of being disciplined about informing people what it is that their responsibilities are. The impact that political influence can have on the trajectory of disclosure. And then staff turnover. That is, you had a lot of the knowledge about how offerings would occur consolidated into one very long tenured position, and then they would leave, and the institution would be left without any device of knowing what that person had done and had been doing for so many years with respect to the offerings. So, and as you can see, these problems aren't lying, cheating, and stealing, but these problems are still, nevertheless, ones that hurt investors, and in some situations, hurt investors quite a bit.

Jacqui, how have you seen these problems materialize in the disclosure process with issuers that you've worked with?

JACQUELYNNE JENNINGS: We're all human, we all get busy, but the staff turnover issue. I've seen that quite frequently. It's a combination of staff turnover and silo effect, where you have one person. They're our bond guy, they deal with the bond, with the bond team, then that person leaves. For the next deal, you realize that all of the institutional knowledge was in that one person and now it all resides with your outside professionals. You don't ever want to be in that position because, again, this is your document. So, your team (we're going to talk about that a little bit later). You should have a team that is vetting the information, providing the information,



and knows what is going on with your agency because having all your institutional knowledge with the outside professionals, while it might be necessary for a short period of time, that's not going to be the best way for you to craft a compliant disclosure.

DANIEL DEATON: Okay, great. And what are some of the more significant challenges within state and local government that you've run into when trying to put together effective disclosure?

JACQUELYNNE JENNINGS: Staffing. There's not just staff turnover, especially when we're working with smaller issuers that are near and dear to my heart. The municipal advisors putting together a schedule for the issuance of debt and then not being cognizant of the fact that this is not a large organization. They've got two people in their finance department and they're in the middle of budget, or they're in the middle of audit. The schedule that has been put together really is not conducive to them actually digging in and being able to take the time to review all of the information that is in the official statement. That is a big problem, just the whole issue of time. Doing this does take time. It's not something that you just can put a stamp on. It's not something that you can just say, "let's see what somebody else did last time, or what did we do last time?"

All of the data in there, you need to look at it with fresh eyes to make sure that, A, it's relevant; you're actually providing all material information that a reasonable investor would want to know about the debt and about your organization. Because your reasonable investor, their big concern is am I going to get repaid? Have you disclosed everything that they would want to know with respect to, here's the stream of income that's going to repay you, here are the risks associated with that stream of income.

DANIEL DEATON: Okay, great. Nikolai, in your experience, how have you encountered these kinds of problems that we have here or other problems? When you start from a finance officer's perspective or from the finance perspective, understanding those potential pitfalls that you might run into. What's your experience with the problems that have arisen, that you have your eye on?

NIKOLAI SKLAROFF: First, as someone who spent most of my career on the private side, and maybe my issuer colleagues will laugh at me for saying this, but I truly underappreciated how many people need to touch a proper disclosure document. Very often we would have team meetings, and somebody might offhandedly say, "it would be great if we had X, Y, Z measure dropped into this paragraph," without realizing how many engineers and supervisors and the like is required to actually compile that one number on the table. This appreciation for this large village that's required. And yet at the same time, just the way we are organized in government with very defined roles, defined position numbers, we tend to be very siloed. This is my job, this is not my job. I was in this meeting, and I was not in that meeting. Some of that is even based on negotiated labor rules. That siloing is important, but not just the horizontal siloing, but also just the flow of information either from the bottom up. Whether people are properly surfacing nascent issues, or whether information is flowing down from senior management and trying to find forums and safe spaces to break down those silos and really make it safe for people to air questions and air concerns.

DANIEL DEATON: Okay, great. Next slide.

Slide 11 – What Should Municipal Issuers Do To Keep on Track?

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DANIEL DEATON: The question then becomes, given these laws and these concerns that the SEC has raised, what's a municipal issuer to do? What should a municipal issuer be doing to keep track of these concerns and these expectations. In another way of putting it, not be a problem that the SEC is trying to solve.

The first of those is to be intentional and systematic. When the SEC has brought actions against well-meaning municipal officials, and there are many of them, against well-meaning municipal officials, simply because of the different sort of problem that they mentioned. A lot of times, people went in well intended. It almost always is focused on processed failures. The SEC has placed heavy emphasis on disclosure policies and procedures that ensure that everyone who should be involved in the disclosure process is appropriately involved. The issuer develops a disclosure practice group that reviews and discusses disclosure, and everyone involved in the process is appropriately trained, so they understand the nature of the disclosure task and their particular role.

Jacqui, what are some ways that a municipal issuer should think about how to approach the disclosure process with intentionality?

JACQUELYNNE JENNINGS: Number one is going back to your policies and procedures. First of all, making sure that they're appropriate for your organization, and also are you actually following them? Also, realizing that the process that you're going to follow may differ depending on what type of debt and for what type of project that's being issued. If it's a refunding, it's going to be different than when it's a new money issue for a capital project because you're going to want to have discussions and disclosure about what that capital project is. Did you finish CEQA¹? What kind of a contract you have? Who is your general contractor? A little bit about them. Are these reliable contractors, and things like that. That means getting different people involved in the process. Generally, it's going to be your finance department, first and foremost, but you may need to bring in people from engineering, people from public works. When you're looking at your disclosure for a project you need to take a step back and look at the totality of the project. What is it? What type of project is it? Who are the people that should have the information that we're going to need? And have them be part of the process. They may not be involved in it all the way through to the closing, but you want to make sure that you are soliciting information and input from them so that the information that you are putting out there to the investing public is correct.

DANIEL DEATON: Perfect. Nikolai, in your experience, what does intentionality in the disclosure process look like?

NIKOLAI SKLAROFF: Very few of us in this marketplace are really building this wall from scratch. Many of us come into organizations and we inherit processes, procedures, and policies. To build on what Jacqui said, yes, it's understanding your policies and making sure you're performing them. But I also would suggest it's more than just checking off boxes on a list. It's understanding the purpose for all this that Dan and Jacqui have just gone through. Because organizations evolve, people change roles, come with different experiences and expectations, so continuously looking at what you're doing and reevaluating whether that is capturing all the information you need.

JACQUELYNNE JENNINGS: Another thing, we have some clients where their policies and procedures, they have different ones for different types of financings, which is extremely helpful. And the other thing is, and Nikolai, you mentioned this, it isn't just a check the box situation because the boxes are going to be different depending

¹ California Environmental Quality Act



upon the type of financing. But the other thing is to have the time to actually look at what these policies and procedures are. Do they need tweaks? But doing them in advance of actually issuing debt. We have some issuers that, during the summer when things tend to be a little bit slower after the budget has been completed, that's when they do take the time to look at their policies and procedures and either say, yes these still work, or is there anything new that we need to add?

DANIEL DEATON: I would kind of just synthesize what the both of you have said. Disclosure policies and procedures and intentionality is about solving a known problem, and good intentionality starts with recognizing these problem areas that the SEC has identified are common through all state and local government throughout the country, so we know it's an organization as well. Let's study our organization for where the potential problems might be, how this could be, where could we get this wrong, and develop an intentional process that anticipates those problems so that they don't actually sabotage good and effective disclosure. It's kind of solving a problem before it arises in a sense.

Slide 12 – What Should Municipal Issuers Do to Keep On Track? (cont. 2 of 2)

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DANIEL DEATON: The second major step is to look at things from an investor's perspective. And it's important to keep in mind that the federal antifraud laws test disclosure from the investors' perspective, not from the issuer's perspective. Materiality is defined as information that a reasonable investor needs to know in order to make an informed investment decision. This requires an issuer to affirmatively and proactively look at its financial and operating condition how a reasonable investor would look at it from the investor's perspective.

A lot of the enforcement actions that have been brought, the problem at stake was just the inability to focus on that one specific disclosure. And it may seem simple when we talk about it like this, but there's nothing simple about this at all. This is what makes municipal issuers very different than corporate issuers. One of the major features is that they have numerous financial stakeholders. A lot of different people within their organization that care a lot about financial information, but they care about them in very different ways. One of the major problems with some of the enforcement actions related to pension plans is just simply that there was no ability to be able to isolate exactly what investors would care about, versus all the other financial stakeholders that were interested in very different elements of that same financial information. Looking at things from the investors' perspective and sort of tuning out other financial stakeholders, being able to look at it very precisely from that, is the second major step that municipal issuers should be doing.

Jacqui, I'm sure you've run into the confusion of materiality and a lot of the other things. Why do you think it is so confusing for local government to understand what investors would consider to be important? There seems to be a lot of confusion out there. What do you think generates that confusion?

JACQUELYNNE JENNINGS: I don't want to say being too close to the action, but being too close to the action. As we said, you are living and breathing this every day, and a lot of times we lose sight of what is it that those investors want to know. It's difficult to do that. I realized that when we're doing a bond issue, this is like for the issuers. This is like extra credit. You have a defined job, and then we're going to pile on top of that. Let's issue bonds. There's a schedule that we have to meet. There's this due diligence that has to be gone through. We may need to make sure that we're telling the potential investors everything that may be relevant and maybe material to their decision to invest in this debt.



A lot of time, I don't want to say it gets lost in the shuffle, but sometimes things do. Taking the time stepping back and putting yourself in there, in the investor's shoes. It's not hard, it's just a different perspective, and it's like flipping on a different switch. That's what we, the outside professionals, we know what we want to know, but helping you and you helping us see what is in that big perspective and what should be disclosed. There's the tabular information and the things that need to get updated, and we can take care of that because we know where it came from. But there's also a lot of other things that are maybe going on with your agency that we don't know about, and you need to be working with your disclosure counsel, with your bond counsel, and letting them know. All of us come together and go through a process to determine whether or not any particular information should be disclosed or if there's something that you were thinking of, well, I don't want to say that because that doesn't make us look very good. We need to know the totality of the circumstances to help you prepare a fully compliant disclosure document.

DANIEL DEATON: Great, Nikolai, can you help explain to municipal issuers how these different financial stakeholders can kind of ground out or sort of create noise that causes them to not. It can be hard to look at an investor's perspective in that kind of noisy environment. What do you recommend that issuers do to stay focused on the investor?

NIKOLAI SKLAROFF: When we're putting together disclosure, we're relying on lots of source documents that are prepared for these many different audiences. For example, in our particular case, much of what is being presented for our commission is based on the rate payers and concerns about their rates going too high. Of course, from an investors' and rating agencies' perspective, their concern is wanting to make sure their rates go up fast enough, and making sure that we distinguish between sources of information and what their intended audience is. Conservatism can mean different things in different contexts, for example. We also produce information for federal and state lenders. We have an interim funding program across all of our three enterprises for commercial papers, so we have many banks who are reviewing our information in addition to the rating agencies. So, they're all of these different organizations viewing this information through different lenses. And as you say, the key is making sure that when we bring that into our disclosure, it remains investor focused. And it's not just about whether we're able to pay our bonds. Hopefully, as an issuer that has a city charter that requires us to set rates at a high to maintain high ratings, that's never a question, but we have to also understand that what we're disclosing can move markets, can affect rating comments. All of that is information that needs to be digested from an investor's perspective.

DANIEL DEATON: Okay, great. Next slide.

Slide 13 – What Should Municipal Issuers Do to Keep on Track? (cont. 3 of 3)

0:37:34

DANIEL DEATON: And finally, just keeping the disclosure free from politics. We've seen two examples of this throughout different examples that are there. Direct forms of political influence where there is direct, overt political influence to keep something out of disclosure. We've seen that usually in the form of trying to stop any disclosure to any stakeholder where there is an effort to try to stay quiet about various things. Although we have seen other varieties where it's more targeted to the disclosure for different reasons. But also, there's another area which is called indirect political influence where the political narrative becomes so firmly entrenched in people's minds that they really can't tell the difference between the political narrative and the actual reality and the facts themselves, and end up disclosing the political narrative not realizing that the political narrative was not accurate to begin with. It's just a reminder that politics permeate all aspects of state



and local government, and even well-meaning officials. Even officials trying to keep political influence out can be confused by those influences without intentionally identifying those influences and being intentional about that process.

Jacqui, what do you think is the key for municipal issuers to avoid political influence in their disclosure?

JACQUELYNNE JENNINGS: Well, I don't want to say threats, but the thing is that under the antifraud rules, there are real consequences. There can be real consequences for publishing materially misleading information. And I think this goes back to not just the finance department—the members of your city counsel, your county board of supervisors, the decision makers—they understand there are real consequences. We've seen it, from fines to jail time. We understand from a political standpoint, you're trying to present your entity, your agency, as the shining example on the hill. But that's not really what's going on. You need to tell your investors, warts and all, this is what's happening. And there is a way that you can do it so people don't look at your credit and go, “oh, that's a dog. I don't want to invest in that.” There's a way that it can be presented. But that information still needs to be presented. And, I think, education. Making sure that the politicians understand why you're pushing to present this information in the document. And it's hard, it's difficult. I'm going to point to you, Nikolai, how do you do that? I mean, you've got different task masters than we do. We're going to be pushing for full disclosure. What else is going on? And always asking, “and then what? And then what?” Until we get to what we think is the logical conclusion of that line of inquiry. But what do you think? And how did you do it?

NIKOLAI SKLAROFF: Many of us look at this headline as issuers, and we think, well, the mayor or the counsel person or whoever hasn't come to my office to tell me what to put in the POS. It's really the more insidious nature of this, in terms of our human and natural biases to want to be advocates for our agencies—to accept information that confirms stories that we want to tell and reject information that doesn't. More indirect influences are more common. The way that you try to address that is being careful not to rely simply on pieces of paper and having people review words on the page, but encouraging conversations. I can still remember in our industry, every meeting was in person, and everyone was around a conference table, and I'm not advocating for that, but I do think we need to create safe spaces where people can talk candidly about topics in safe settings and to ask questions that are either uncomfortable, and also that people are free from embarrassment of asking questions that others in the room may feel that they should already know. That's an important part of it as well.

JACQUELYNNE JENNINGS: There's also the aspect of technology, social media, just the fact that anybody can do a dive, not necessarily a deep dive, but they can find information so much more readily now than we could, say, 10 years ago, 15 years ago, so things that you think or you hope will not be raised. There's a lot of people out there that can find it. You can find the information. So, you want to say, if there's contrary data available, trust me, somebody is going to find it, so might as well put it in. Be up front about it because the information will be discovered.

DANIEL DEATON: So that is an excellent segue to our next slide.

Slide 14 – Just a Little on Secondary Market Disclosure

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DANIEL DEATON: We want to talk a little bit about secondary market disclosure, just to make sure that people do know that the SEC is focused on this topic. This is a fairly nuanced topic, and it's hard to make sure that



people have a really accurate perspective on what the SEC is focused on. We're going to try to do a little bit of that here.

Primary disclosure is an offering document. It's a preliminary official statement. It's disclosure that we make to investors when an issuer is issuing the bonds, and investors are buying them in an offering by the issuer. Secondary market disclosure is the disclosure that goes to investors, or that exists, that informs the trading of bonds for the many years that go on after the bonds are actually issued. Municipal issuers make multiple forms of secondary market disclosures; there's continued disclosure filings, there's voluntary posts on EMMA, there's investor calls, inquiries, and conferences. There's a whole variety of different intentionally formed secondary market disclosure. But as we're going to talk about on the next slide, there's also a lot of unintentionally created secondary market disclosure. So, next slide.

Slide 15 – Just a Little on Secondary Market Disclosure (cont. 2 of 2)

0:45:20

DANIEL DEATON: In 2020, the SEC put out a staff legal bulletin. That staff legal bulletin sought to inform the legal community about what are the expectations of issuers in connection with their secondary market disclosure. One of the things that they repeated was something the SEC had said about those statements in two other occasions, any statement that is reasonably expected to reach the investor community can be tested under the federal securities laws. This can involve a wide array of communications such as websites and statements from officials, among others. Then it goes on to explain that the circumstances of those statements is the measure of how they will be tested. When statements, in term of the staff legal bulletin, alter the total mix of information under their circumstances, they are going to be tested more rigorously. The most notable situation where we saw this arise was with the COVID-19 pandemic where there was this major event that was happening, in which there was a lot of information. All of the disclosure about the financial and operating conditions of issuers suddenly really were not very informative. All of a sudden, what you had was a new event and a new development that was occurring, and investors were grabbing any press release, newspaper article, or whatever they could do to figure out how to buy bond, whether to sell or buy bonds from that issuer. That is why there was such an effort to get out voluntary disclosure in connection with COVID.

There is another situation with Harrisburg, Pennsylvania, where they did not provide any continuing disclosure for two years, in which they put the investors in the dark and left them with no alternative other than to rely on these other kinds of statements. The statements through press releases, newspapers, and other information can actually be brought within the scrutiny of federal antifraud laws, but it doesn't happen necessarily on an ordinary course basis. It happens when a major development occurs so that the disclosure that is out there doesn't adequately inform investors about what the actual investment picture looks like.

Trying to make sure that the issuer maintains secondary market disclosures that update investors concerning its financial and operating condition. In other words, don't make the mistake of Harrisburg of failing to regularly inform investors as promised so that they have a pathway to understand what needs to be done, but also developing a sense of process around this to ensure that major developments do not blindside investors and cause them to trade bonds unexpectedly.

Jacqui, what do you think the municipal issuers should do to keep an eye on press releases or newspaper articles while not overly suffocating the free flow of the political process?



JACQUELYNNE JENNINGS: This is difficult, because these press releases are not necessarily going to go through the finance department before they are released. It's imperative that you have really good training so that the people who would be issuing these press releases are aware that—particularly when you're in the market with your bonds and also afterwards—all of this information is going into this big mixing bowl of information that people may use to make decisions about whether to buy, sell, or hold our debt. In the perfect world, the information that's going to be released in the press release, somebody would kick it over to the finance department and say “hey, is this cool? Is this going to affect any of the disclosure that we have out there?” But I'm realistic, and I know that that's never going to happen. Your best defense is providing all of these folks with adequate training so they understand—as my nephew says, “you're not trying to ride their style”—what you're trying to do is to keep everybody compliant, so they have a better understanding of why you want to be maybe more circumspect or just check in with finance before these press releases and that information is made public.

DANIEL DEATON: Nikolai, what are some steps that municipal issuers should consider when it comes to political speak, press releases, or newspaper articles?

NIKOLAI SKLAROFF Well, it's frustrating not to be able to look out and see the audience here. I suspect that most of the people joining us today are in finance departments or treasury management roles. My advice would be, don't feel you need to fight this fight alone. You may be responsible for preparing primary market disclosure and secondary market disclosure to the marketplace but build strong bridges. In our case, we work very closely with our external affairs team, and even more importantly, with our city attorney's office counsel. Make sure that even for those conversations where you're not in the room or you're not reviewing the press release, that the people who are, are partners in this effort.

JACQUELYNNE JENNINGS: Because one of the things that's important is for everyone to understand is that this is a really cooperative process. We are all working towards the same goal. That goal is to make sure that you are in compliance with the federal securities laws, but we all need to work together to get that done properly. We're on your team. Everybody should be thinking that we are all on the same team.

DANIEL DEATON: Okay, good. Next slide.

Slide 16 – What Does This All Come Down To?

0:52:15

DANIEL DEATON: We're going to now shift to the second part. Some of the key elements here. It is equally important to exercise reasonable care as it is not to intentionally update something that is wrong. Omissions are as important as misstatements. It is the municipal issuer's responsibility to tell that credit story to investors—not the responsibility of the investors to ask. One thing that's really critical, that Nikolai alluded to, is that one of the misnomers out there is that municipal issuers have always paid their bonds at the end of the day. What the problem is, is that these bonds are being bought and sold in the marketplace, and so if somebody loses money by buying and selling a bond, even if that bond is ultimately paid, it still means they've lost money and it still means that they've been hurt. Finally, not only do the political or policy consequences of information not excuse its nondisclosure, the SEC is actually targeting that exact situation to bring enforcement actions to make that point. Okay, next slide.

Slide 17 – How Do We Cultivate a Culture Where We Do This?

0:53:22



DANIEL DEATON: What we want to do now is just spend about 20 minutes going through these different five categories about some specific questions on how municipal issuers can cultivate a culture where they do this.

Slide 18 – Written Policy and Procedures

0:53:37

DANIEL DEATON: The written policies and procedures, talking about the real how to on these questions. Here are the key topics that we want to talk about. Jacqui, why is this so important that a municipal issuers' disclosure policies and procedures be written down? I mean, why don't we just kind of agree we're going to have a good process? Why do we actually have to have written procedures?

JACQUELYNNE JENNINGS: It's protection for you to show that whatever the process that you have employed is reasonable, and that is a defense for you if there is an issue subsequent to the issuance of your bonds. The other thing depends on what your policies look like. One of the things that is really important is for those who haven't yet done it, your policies are not something that can be just taken off the peg. You can start with a form that you found online for GFOA or whatever, but you then need to look and make sure that it is customized to your organization. I mean, a lot of them are drafted for organizations that have 10, 15, 20 people in their finance department. You've got a finance department of two. So, saying that we're going to send the document to this position, and then that position sends it to another position for review and sign off, doesn't make sense when you have only two people that are in that department, and one of them is a part-time person.

It also acts as a good guide of where you've been and what you've decided is important and relevant for the process that you're going to undergo. But as your organization grows or shrinks, if you don't have your policies written, you don't know where you've been, and you don't know where you're going.

DANIEL DEATON: Nikolai, when you look back from your perspective and your experience, what steps do you think that municipal issuers should consider to include in their policies and procedures that they take before they actually put offering material out there?

NIKOLAI SKLAROFF: The important thing is that we do have requirements for disclosure working groups. Our requirements in our policies require that the group meet multiple times a year regardless of whether we have transactions or not. Senior management reviews, commission approves. All of these things, but I'd hasten to highlight, we're also not a typical issuer. We have four rated entities, three of which issue public market securities currently, and so we've inherited very prescriptive policies and procedures. Ours happen to be 87 pages long. I don't necessarily recommend that for everyone who is listening, but we're in the process right now of comprehensively refreshing those, and as I said, my team is attentively listening to what you're recommending today in that context.

One of the important things in this is that we are constantly reevaluating what works. As I mentioned, organizations change. We're trying to make sure that even where people are doing review that there's actual conversation with them. Because often the disclosure is a matter of peeling back onion layers and really engaging in conversation with our disclosure counsel and city attorney's office.

JACQUELYNNE JENNINGS: Nikolai, those are good points to make, because while we didn't say it in the slide, is that you're not on your own when you're doing this. You have the assistance of your internal counsel, your disclosure counsel. They can help put this together and help you review or revise and update your policies and your procedures.



DANIEL DEATON: Good, and Jacqui, why is it so important to have a disclosure coordinator?

JACQUELYNNE JENNINGS: Because as a couple of slides ago, we were talking about where information may be coming that is not from the finance team. It could be in the form of press releases, or just investors giving somebody in the finance department a call. We want to make sure that you're providing consistent information to everyone at the same time. If you have a disclosure coordinator, that's the go-to person. That's a person that should be somebody who is in the know and is going to be the last eyes that look at any disclosure that goes out. They are important because they're going to be the gatekeeper as to what is and what isn't going to be said on behalf of the agency. And one of the things is that if the disclosure coordinator is starting to get a lot of calls from various investors or potential investors about a particular topic, you don't want to be on the fly providing information to some investors but not all. But if you notice that there's a trend, you might want to take a step back and say "perhaps we should do a voluntary disclosure and answer these questions so that everybody has the information at the same time."

DANIEL DEATON: Nikolai, can you just provide municipal issuers with a sense of how broad and wide within municipal issuers could these subject matter experts reside? What advice do you have about how to herd the cats, as it were?

NIKOLAI SKLAROFF: A couple things. First, while it seems self-evident that your finance folks would be involved in this depending on the type of credit and the type of organization you're part of. The personnel who are involved may be very far removed from debt. As I gave the example earlier, you may have a specific story that you're trying to tell. Someone suggests a specific measurement would be important. That may be information that doesn't already exist in financial statements or budgets and they require, for example, in our case with utilities going back to specific engineers, maybe even groups of engineers, to be able to compile the different numerators and denominators that make up that measurement. So, it can often be people who are not traditionally involved in either finance or bond issuance. Part of our process and our goal to continue to improve is to have these meetings with our enterprises, before anyone puts pens on paper to talk about what the process is. We bring in our disclosure counsel to explain what we're doing and why we're doing it to people who may not normally get involved in bond transactions.

DANIEL DEATON: Okay, great. And then for both Jacqui and for Nikolai, when it comes to the question of involving senior management and governing bodies, why is it so important and what advice do you have on how to involve them and structure their involvement in the disclosure process?

JACQUELYNNE JENNINGS: Nikolai, do you want to go?

NIKOLAI SKLAROFF: First, it's very easy to move pieces of paper in front of people in an organization, and governments are famous for moving documents with long lists of potential recipients. But I think one of the most important things that we've tried to do is to create conversations and create safe spaces for those conversations among our most senior people. Because I think it's harder for people to say, "oh, we need a paragraph on this" versus having that conversation and pulling back layers and then deciding there's a story to be told there. And another part of that is in our disclosure practices working group; making sure that we're always supplementing it and thinking about who should be involved, notwithstanding who's listed as a participant.



JACQUELYNNE JENNINGS: To follow up on what you just said, Nikolai, is that people who are listed as participant, a lot of times that's generated by whoever's preparing the working group list. We may not know. We're working from the last working groups list and saying, "here's who should be on there." You tell us who else needs to be at the table, what other experts within your organization need to be there and participate. And, again, their participation may be for a limited duration, but we need to know and you need to tell us who else has this subject matter expertise for preparation of this official statement.

DANIEL DEATON: Okay, next slide.

Slide 19 – Creation and Empowerment of Disclosure Practices Working Group ("DPWG") **1:09:01**

DANIEL DEATON: We have about 6 minutes left, so I thought we would just comment very quickly on each of these topics. Jaqui and Nikolai, just a couple minutes on this. How do you choose the right members of the disclosure practices working group, and how do you make their function effective for what they do?

JACQUELYNNE JENNINGS: We kind of touched on this in connection with the prior slide, but a number of our clients in their written policies and procedures have the core group of who is going to be in that disclosure practices working group. We also have what they're responsible for. It specifies it in fairly broad terms as to what it is, why we want the engineers there, why we want the head of internal affairs, or whatever. Those are their main responsibilities. It's to help the organization pull together the relevant information that is necessary for the official statement. And you know, all of the members of the DPWG may or may not attend all of the bond meetings that we have because a lot of times we have them weekly. But they do provide significant and important input into shaping the official statement of the disclosure they're in.

But again, you need to tell them what it is that we expect for you to do. And that is a good thing because everybody is on the same page. It also provides us with a way to look and see, do we have any holes gathering this information, because we're asking one group to do A, B, and C, and we're asking another group to do X, Y, Z, but there's a big hole in the middle of that alphabet that we don't have anybody providing input on.

DANIEL DEATON: Nikolai?

NIKOLAI SKLAROFF: As we design systems across government, there's a natural tendency to want to create as few hurdles and burdens as possible. I think this is an area, where we benefit by being as expansive as possible in terms of making sure that we have appropriate subject matter experts.

DANIEL DEATON: My contribution to this slide would be that the disclosure processes working group is supposed to basically do two things. One, is supposed to be a silo buster. That number one, you want to pick memberships that make it so that you can't operate with disclosure on silos. You have enough people in the room who are either in charge or in the other silos. Have them work together across the organization that silos don't cut off that information and perspectives because it's sitting in the room. And then, second thing is, it needs to be a space where only the investor matters, and all the other sensitivities and concerns leave the room. It's that ultimate proactive protection against not being able to see the big picture credit story, not being able to



identify indirect political influence. It needs to be that space where only the investor matters, and only those facts the investor needs to know, so that place can operate in an effective fashion, would be my thoughts on it.

So, okay, good. Next slide.

Slide 20 – How to Assemble and Draft Disclosure

1:09:08

DANIEL DEATON: Jacqui, a lot of the different people on this issue annually. A lot of times, even credits in our world sort of move slowly, but they still move in that sense. So, how do you prevent the disclosure preparation process from becoming a stale copy and paste exercise?

JACQUELYNNE JENNINGS: One of the things that's great is, if you've got new people coming into your organization, make sure they're on the team, because they do have the proverbial fresh eyes. It is difficult, because the tendency of all of us is to start where you left off last time and then start updating from there. There is a huge problem with that because whatever yesterday's important topic was may not even be relevant today. Think back when we were all scrambling and doing page and a half on the year 2000 problem. And that's no longer an issue. You've got, right now, a lot of issuers still have really extensive disclosure in their official statements about COVID. Well, we're winding that down and looking at—is it really relevant to have 4, or 5, 6 pages about COVID and the pandemic? Is that really necessary, or can we just wrap that all up in one nice paragraph?

Part of the things is, there is core information that is going to be in all of your official statements, but some of the other things, for example, if you've got a section in there that's talking about risk factors. Looking at those to make sure that those risk factors are still relevant and also looking at the ones that you do have there isn't too sparse. I mean, for a long time, the whole issue about climate change was just to pay three or four lines that said, "there's climate change. We don't know how that's going to affect us." Well, that's not true anymore. We do know. There's been multiple studies and looking at where is that information, I've had a couple of issuers where they said that seems like that should be okay. You've got a whole site on your city website talking about what are the anticipated effects of climate change because you are a coastal community and things like that. And part of it is being aware of things and other information that you're putting out there. When you're updating your city plan, there is information that you have prepared, or has been prepared on your behalf, that is discussing a lot of this information that may need to be in your disclosure documents. Look at those. Use those as a guide too.

DANIEL DEATON: Great, my little life hack trick on this question is that every time I start a disclosure process, the first section of the offering document, I refer to it as overview of financial condition or something like that, and I make us work on the overview first. What's the big picture? What's the back of the envelope, high level on revenues, expenditures, liquidity, challenges, known risks, known things, and flesh out two pages that tell this back of the envelope story, then get going with the disclosure. And too often, it tends to be the other way around. We can't really deal with a hundred pages at once, as it were.

JACQUELYNNE JENNINGS: No.

DANIEL DEATON: Yeah, so Nikolai, how do you get the most out of subject matter experts to make sure that you're getting from them the new thing that may only come from them?



NIKOLAI SKLAROFF: The important thing is having conversations, not asking people to review words on a page. You can hand someone a page, and all the words are true, nothing is false. But it doesn't tell the full story, it doesn't have all the information. We also have a separate disclosure counsel. We work with a disclosure counsel who is separate from our bond counsel and works across all three of our enterprises. In many ways, it helps us to make sure that where appropriate, we're telling consistent stories, and then making sure that the stories differ where appropriate, because we have three different enterprises with three different customer bases and service areas. That's an important part of that as well.

DANIEL DEATON: Okay, great. And then the last question for this, and then we've got three questions to ask. Next slide.

Slide 21 – How to Interact with Outside Professionals When it Comes to Disclosure 1:14:44

DANIEL DEATON: One question on this point that I want to do is, Nikolai, just from your perspective of your experience being on the private side, being in the public in different places, and so on. What do you think it comes down to having healthy proper relationships with outside professionals? What's their role? What isn't their role? Just a comment on what municipal issuers should be thinking about in terms of how to appropriately interact and effectively interact with outside professionals.

NIKOLAI SKLAROFF: Well, first of all, having a good partnership with your general counsel and internal counsel. And in many cases, that is who is actually hiring the legal professionals who are such trusted and important advisors. Having teams that are fully engaged, making sure that we're not just having lots of names on a Zoom page, but that people are genuinely reviewing documents and providing that input. We include, for example, our co-managers, because we know that they can be—as Jacqui referred to— that fresh set of eyes, and quickly look to our underwriters to make sure that we are helping to present that investor perspective.

DANIEL DEATON: Okay, great. And then, next slide.

Slide 22 – How to Train the Organization as a Whole? 1:16:31

DANIEL DEATON: Jacqui, just a few words on how to train the organization as a whole, at the different levels, everything from the core people to the subject matter experts, the senior management given bodies, just a few words on how do you effectively train an organization to do this?

JACQUELYNNE JENNINGS: As we discussed, I think at the beginning is that the training that would be for the different types of organization are going to differ. The people who are going to have their hands on it every day, which I would assume is going to be in your finance department, have your disclosure counsel do a deeper dive with them of everything they need to be aware of. But for everybody we're going to do —and you should be doing an overview of the federal securities laws, the cautionary tales that we talked about, the things to avoid, and just really impressing upon them, why it is that you have to follow these federal securities laws at all. I mean, your bonds are securities, and investors in securities have a right to information, and you need to provide that to them. It's just taking the whole, which is the basis of all of this, which is the federal securities laws, and making sure everybody understands that. Then as we —I don't want to say go down the line but— as we transfer over to the people that will be more involved directly, making that information, and the training that



goes for them much more detailed, because they're going to want to know when we should be doing a voluntary disclosure, do I have to. Then you go, "no, it's voluntary," but when should we think about doing that? That is not something that necessarily the senior management need to be involved in, but they do need to know that these federal securities laws apply to all of the information that you are releasing, whether it's the official statement, these voluntary disclosures, press releases, everything. Assuming that the reasonable investor is going to rely upon those statements.

DANIEL DEATON: Okay, so Robert, we have three questions, right? Oh, sorry, Nikolai.

NIKOLAI SKLAROFF: I was just going to highlight that the time to do it, is not when you've presented governing bodies with a 3-foot stack of virtual documents. It's taking time away in advance, to really get into this conversation separately from the approval process.

JACQUELYNNE JENNINGS: Absolutely.

DANIEL DEATON: Yes, good point. Okay, Robert, we've got 3 quick questions. We got 6 minutes.

Slide 23 – Questions

01:19:58

ROBERT BERRY: One of the folks here wanted to hear just some quick examples of penalties for disclosure failures, and they want to emphasize the importance by elevating the agency's commitment to right-sizing their staff resources for debt and disclosure. Just talk a little bit quickly about some of the fines and penalties for disclosure failure.

DANIEL DEATON: I can deal with the fines and penalties, as part of *Dodd-Frank*, both the 1934 Act and 1933 Act were amended to provide for monetary fines. I think there's maximum fines. I think it's \$50,000, I can't remember depending on how often they are. They're mapped out there. The most important thing is that the SEC learned that at some point, they needed to actually charge individuals and fine individuals for disclosure failures in order to get behavioral change. What we've seen is an enforcement action in Washington and an enforcement action in the City of Miami, concerted effort to actually charge the individuals with fines. And then we've seen also, for example, like the Port Authority of New York and New Jersey was fined \$400,000. There are fines that are levied not just against the organization, but where there are individual disclosure failures that have been fined against the individuals as well.

ROBERT BERRY: This is another interesting question here. What should a municipality do if a Public Records Act request comes in for financial information that has not been previously disclosed?

DANIEL DEATON: If any statements that are reasonably expected to make to the investment community are tested within the federal antifraud laws, so if that financial information is actually produced as a part of the Public Records Act, and it is something that is produced for that purpose, and it is reasonably expected then to reach the investment community because it'll end up in the newspapers, or if they're investors as well, which happens. Then it's going to be important to understand that those statements now can alter the total mix of information if that information is material enough. In that situation, our advice would be to make sure that at the time that the information is actually handed over, if it needs to be handed over, to post that financial



information on EMMA as a voluntary disclosure to make sure the market has knowledge and understanding of that disclosure. That's the way we would handle it. Jacqui, I assume you'd have something to say.

JACQUELYNNE JENNINGS: Probably, so everyone is getting the same information at the same time. You should not be providing any one particular investor with an advantage over all the rest.

DANIEL DEATON: Okay, great.

ROBERT BERRY: Okay, I know this has been a topic of discussion before when I talked to Nikolai about this. When might it be appropriate to have a disclosure counsel who is different than your bond counsel?

DANIEL DEATON: Yeah, we'll have Nikolai answer that.

NIKOLAI SKLAROFF: I personally, throughout my career, not just at my current agency, I prefer a natural tension at the table where there are multiple people questioning and reviewing other people's documents. Doesn't mean I like adversarial transactions, but I think it's healthy to have different players at the table reviewing the same information, and I personally prefer a separate disclosure counsel. In our case, because we are doing disclosure for multiple entities, multiple credits, it also allows us to provide continuity in disclosure while having different bond counsel with subject matter expertise in those different types of utilities.

JACQUELYNNE JENNINGS: You are also going to have underwriter's counsel at the table, unless it's a competitive deal, and underwriter's counsel is also going to be reviewing the disclosure and will have comments and suggestions as to how it can be improved.

DANIEL DEATON: Okay. Well, I think we've reached time. So, Robert, back to you.

ROBERT BERRY: We ought to close our program, but before we sign off, of course, a huge thank you to Dan Deaton, Jacqui Jennings, and Nikolai Sklaroff for sharing their expertise on today's program.