



UPDATE ON MUNICIPAL DISCLOSURE

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CDIAC took part in the 2002 National Association of Independent Public Finance Advisors (NAIPFA) Conference on October 3rd at the Park Hyatt in San Francisco. CDIAC participated in a disclosure panel that included Martha Mahan Haines, Chief of the Security and Exchange Commission's (SEC's) Office of Municipal Securities¹; Robert Olson, a partner specializing in public finance at Squire, Sanders & Dempsey, San Francisco Office; and Frank Moore, research specialist with CDIAC. This panel was moderated by Robert Doty, President, American Governmental Financial Services Company. In addition, Thomas Johnsen, Principal with Fieldman, Rolapp & Associates, briefed the audience on Muni Council initiatives.

Regulator Perspective

Ms. Haines started the panel discussion by speaking about the Muni Council initiatives that came out of their September 26, 2002 meeting. The Muni Council, a group representing the various municipal bond market participants, including issuers, bond counsel, financial advisors, and investors, was formed last year to explore and recommend means of improving disclosure. The meeting was held to discuss steps being considered to improve secondary disclosure in municipal bond markets. In addition, Ms. Haines discussed a number of her personal views on disclosure.

- **CUSIPs:** The Muni Council worked with the Committee on Uniform Security Identification Procedures (CUSIP) Service Bureau to arrange for CUSIP numbers to be made readily available to issuers. Some issuers were concerned that the use of CUSIP numbers in an Official Statements (OS) might be a copyright infringement. In a recent letter to the Government Finance Officers Association delivered at the Muni Council meeting, the Service Bureau stated that issuers, obligated persons, and their agents (including financial advisors, underwriters, and legal counsel) may include reference to relevant CUSIP numbers in information they disseminate concerning issues of municipal securities, including on web sites. Users should include an appropriate reference to the American Bankers Association copyright on

CUSIP numbers. Ms. Haines stated that it was important for issuers to know their CUSIP numbers when it comes time to file their continuing disclosure reports. Printing CUSIP numbers on the cover of an OS is one way to ensure that issuers have that information at hand when needed. The Service Bureau is in the process of creating an on-line service for issuers to obtain their CUSIP numbers. In the meantime, issuers may call the Service Bureau to obtain that information. Ms. Haines stated that use of CUSIP numbers is essential to the functioning of the continuing disclosure system established by SEC Rule 15c2-12.

An audience member asked Ms. Haines if CUSIP numbers can change over time and how issuers should deal with it. Ms. Haines responded that CUSIP numbers can change in a number of circumstances, such as bonds that become insured in the secondary market or are advance refunded. The changing of CUSIP numbers is not a problem for nationally recognized municipal securities information repositories (NRMSIRs) because each are licensees of the Service Bureau and receive electronic feeds of the new numbers. The original number is cross-indexed with the new CUSIP numbers, so that when the issuer sends in a report under the old number, it is automatically linked to the new number. Similarly, if an investor looks for continuing disclosure reports under an old CUSIP number, the cross-indexing system should pull up the correct report.

- **Municipal Secondary Market Disclosure Information Cover Sheet:** Ms. Haines stated that a new cover sheet, designed by the Bond Market Association, was presented at the Muni Council meeting. The new cover sheet includes a phone number for issuers and their agents to call at the Service Bureau to obtain the proper CUSIP number for their issues. The cover sheet provides information necessary for documents to be correctly indexed. Ms. Haines encouraged issuers to use a cover sheet that includes such information when making either voluntary or required filings of secondary market information submitted by or on behalf of issuers to NRMSIRs, state information depositories (SIDs), and the Municipal Securities Rulemaking Board (MSRB).

¹ The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of Ms. Haines and do not necessarily reflect the views of the Commission or of other upon the staff of the Commission.

See page 13 of this issue of *DEBT LINE* or visit www.bondmarkets.com to obtain a copy of the new cover sheet.

- **NRMSIRs:** Ms. Haines stated that both the Office of Municipal Securities and the National Federation of Municipal Analysts found that a number of municipal issuers are failing to meet their secondary market disclosure requirements. In addition, filing errors were observed at the NRMSIRs. In its recent study of the NRMSIR system, her Office discovered that some issuers and obligated parties are not filing at all while some issuers fail to send their filings to all four NRMSIRs, as required by SEC Rule 15c2-12. She also stated that the filing problem is especially evident among conduit issuers. In addition, her Office found numerous inaccuracies in the NRMSIRs' respective indices, which the use of a cover sheet is designed to address.

One way to address the problem of issuers which fail to file at all of the NRMSIRs might be to institute an electronic "post office" as the only location at which issuers would file their secondary disclosure reports. The function of the "post office" would be to immediately forward all filings to all four NRMSIRs and to the appropriate SIDs. In that way, every NRMSIR would have a complete document collection. Another idea discussed at the Muni Council is to establish one NRMSIR that would accept only electronic filings and provide reports free to any requestor. As a practical matter, implementation of a "post office" or free on-line NRMSIR would necessitate that all filings be made electronically. However, a member of the Muni Council noted that a fax received by a computer is an electronic document. [See the *DEBT LINE* IN-BOX for more information on this issue.]

- **Continuing Disclosure Agreements:** Ms. Haines asked that the audience request bond counsel to write continuing disclosure agreements in plain English. According to the SEC's "A Plain English Handbook: How to create clear SEC disclosure documents," a plain English document uses words economically and at a level the audience can understand. Its sentence structure is tight, its tone is welcoming and direct, and its design is visually appealing. A plain English document is easy to read and looks like it's meant to be read.
- **Tickler System:** Ms. Haines mentioned that one idea raised at the recent Muni Council meeting was for issuers to establish tickler systems to remind them of due dates for their secondary disclosure reports. Many financial advisors are doing this for their clients now.
- **Corporate Disclosure:** Ms. Haines reminded the audience of the federal Sarbanes-Oxley Act of 2002, which contains provisions on corporate responsibility, audit committees, auditor independence, the creation of a new accounting oversight board, and the ethical responsibilities of lawyers and securities analysts. Although its

actual scope is limited to equity securities, when put into practical effect, it may indirectly affect other markets, including the municipal market, as its provisions become part of the custom and practice of a firm as a whole. She noted that, while the portions of the Sarbanes-Oxley Act that apply specifically to financial analysts are limited to equity analysts, the Commission's proposed Regulation Analyst Certification (Regulation AC) does apply to municipal analysts as well. Its provisions are simple: securities analysts must certify that their research reports reflect their personal views.

- **Edison School Enforcement Action:** Ms. Haines also mentioned the recent settlement of an action brought by the SEC against Edison Schools, Inc. alleging that Edison's financial disclosure was materially misleading because its manner of revenue recognition included revenues never reached Edison². Instead, these funds were expended by school districts (Edison's clients) to pay teacher salaries and other costs of operating schools managed by Edison. She noted that the SEC did **not** find that Edison's revenue recognition practices contradicted Generally Accepted Accounting Principles or that its net earnings were misstated. The SEC nonetheless said that Edison committed violations by including material misstatements regarding its revenues. Ms. Haines explained that this concept applied beyond the accounting arena; technically accurate statements may be misleading if they hide an accurate rendition of the "big picture" from investors.
- **Republication:** Ms. Haines encouraged the practice of posting an OS on an issuer web site. She said that, as far as the Commission is concerned, the anxiety over " republication" (i.e., that a document posted to a web site must be fresh every time it is accessed) is overblown. The municipal market misunderstood what the SEC said about the republication concept in its release about disclosure using electronic media. Ms. Haines noted that it would not make any sense for the SEC to expect issuers to continually update information posted on web sites as it would cause issuers to make less information of interest to investors available on its web site.

Tracking Bond Prices on the Internet

Mr. Olson presented slides on InvestinginBonds.com, a web site run by The Bond Market Association that offers bond transaction reports for municipal, corporate and Treasury bonds and other information helpful to potential bond purchasers. Specifically, Mr. Olson showed the audience how to use the web site to view municipal bond prices. A report on yesterday's bond sales can be obtained by clicking on "daily moving summary information" located on the top right of the site's home page and using "Browse today's Daily Report." Currently, only those bonds which have traded three or more times on a particular day are included in

² In the Matter of Edison Schools, Inc, Respondent. Securities Exchange Act of 1934. Release No. 45925/ May 14, 2002.

the Daily Report. The report of yesterday's sales will typically include about 1900 issues out of the 1.4 million issues that are outstanding. Users can search the Daily Report by state and sort by credit rating, maturity, coupon, CUSIP number, volume traded, and number of trades. In addition, by using a specific CUSIP number, users can view all sales of that municipal bond made more than one week ago back to June 2000. That data is accessed by using "Search the History for specific bonds."

Mr. Olson went through a number of searches on the Investing in Bonds web site of specific bonds by CUSIP numbers including an uninsured airport facility bond, an uninsured and an insured New York Port Authority bond, a San Francisco Airport Authority bond, land-based bond issues, and municipal utility district bond issues. Mr. Olson then demonstrated how to search among reports of yesterday's bond sales by credit rating, maturity, and volume traded. The resulting charts illustrated, for instance, how the September 11, 2001 terrorist attacks and defaults can affect bond prices.

Electronic Disclosure

Mr. Moore discussed issues in electronic disclosure, including two *DEBT LINE* surveys on the use of the Internet by cities and counties for disclosure and on the barriers preventing municipalities from implementing electronic disclosure. In addition, he discussed CDIAC's Electronic Disclosure Issue Brief, which provides a number of suggestions for entities contemplating establishing an electronic disclosure program. Lastly, Mr. Moore discussed two disclosure-related *DEBT LINE* articles, an upcoming survey, as well as Government Finance Officers Association work on the subject. The articles and issue brief can be found on CDIAC's web site (www.treasurer.ca.gov/cdiac) or be ordered by calling (916) 653-3269.

Muni Council

Mr. Johnsen presented ideas coming out of the recent Muni Council meeting for NAIPFA members to adopt as procedures:

- Utilization of electronic means for distributing a preliminary official statement and an OS for transactions in the primary market.
- Utilization of electronic methods to file and distribute continuing disclosure filings and information.
- Use of the new Municipal Secondary Market Disclosure Information Cover Sheet (see page 13) with all continuing disclosure filings. The cover sheet has a phone number to call if the issuer does not know the CUSIP number for a particular issue.
- Use of CUSIP numbers with maturity schedules on front or inside front covers of an OS.
- Use of CUSIP numbers on first page of all continuing disclosure filings.
- Request auditors to provide financial statements in an appropriate electronic format (such as PDF) that facilitates integration with other electronic disclosure information.
- Request that NRMSIRs provide receipts to issuers for all continuing disclosure filings.
- Use of a tickler system to remind issuers of annual report due dates. Some financial advisors may provide their clients with such a tickler system already.

In addition, Mr. Johnsen provided his personal perspective on a number of issues, including:

- He stated that there are market participation concerns about continuing disclosure filing practices attributed to variable rate transactions.
- Mr. Johnsen stated that it is important to educate agencies on the importance of continuing disclosure. Good disclosure is good business. More investors will be interested in your issues if you fully disclose, thus increasing the market for bonds and liquidity.
- Mr. Johnsen was asked how to measure good disclosure. Eventually the Muni Council hopes to quantify the value of good disclosure by showing the difference between bond prices for similar types of issues with different levels of disclosure. Before then, however, it makes sense to communicate accurate information to investors on a regular basis.

This Offprint was previously published in DEBT LINE, a monthly publication of the California Debt and Investment Advisory Commission (CDIAC). CDIAC was created in 1981 to provide information, education, and technical assistance on public debt and investment to state and local public officials and public finance officers. DEBT LINE serves as a vehicle to reach CDIAC's constituents, providing news and information pertaining to the California municipal finance market. In addition to topical articles, DEBT LINE contains a listing of the proposed and final sales of public debt provided to CDIAC pursuant to Section 8855(g) of the California Government Code. Questions concerning the Commission should be directed to CDIAC at (916) 653-3269 or, by e-mail, at cdiac@treasurer.ca.gov. For a full listing of CDIAC publications, please visit our website at <http://www.treasurer.ca.gov/cdiac>.

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Municipal Secondary Market Disclosure Information Cover Sheet

This cover sheet should be sent with all submissions made to the Municipal Securities Rulemaking Board, Nationally Recognized Municipal Securities Information Repositories, and any applicable State Information Depository, whether the filing is voluntary or made pursuant to Securities and Exchange Commission Rule 15c2-12 or any analogous state statute.

See www.sec.gov/info/municipal/nrmsir.htm for list of current NRMSIRs and SIDs.

IF THIS FILING RELATES TO A SINGLE BOND ISSUE:

Provide name of bond issue exactly as it appears on the cover of the Official Statement
(please include name of state where issuer is located):

Provide nine-digit CUSIP* numbers if available, to which the information relates:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

IF THIS FILING RELATES TO ALL SECURITIES ISSUED BY THE ISSUER OR ALL SECURITIES OF A SPECIFIC CREDIT OR ISSUED UNDER A SINGLE INDENTURE:

Issuer's Name (please include name of state where Issuer is located): _____

Other Obligated Person's Name (if any): _____
(Exactly as it appears on the Official Statement Cover)

Provide six-digit CUSIP* number(s) if available, of Issuer: _____

*(Contact CUSIP's Municipal Disclosure Assistance Line at 212.438.6518 for assistance with obtaining the proper CUSIP numbers.)

TYPE OF FILING:

ÿ Electronic (number of pages attached) _____ ÿ Paper (number of pages attached) _____

If information is also available on the Internet, give URL: _____

WHAT TYPE OF INFORMATION ARE YOU PROVIDING? (Check all that apply)

A. Annual Financial Information and Operating Data pursuant to Rule 15c2-12

(Financial information and operating data should not be filed with the MSRB.)

Fiscal Period Covered: _____

B. Audited Financial Statements or CAFR pursuant to Rule 15c2-12

Fiscal Period Covered: _____

C. Notice of a Material Event pursuant to Rule 15c2-12 (Check as appropriate)

- | | |
|---|---|
| 1. Principal and interest payment delinquencies | 6. Adverse tax opinions or events affecting the tax-exempt status of the security |
| 2. Non-payment related defaults | 7. Modifications to the rights of security holders |
| 3. Unscheduled draws on debt service reserves reflecting financial difficulties | 8. Bond calls |
| 4. Substitution of credit or liquidity providers, or their failure to perform | 9. Defeasances |
| 5. Substitution of credit or liquidity providers, or their failure to perform | 10. Release, substitution, or sale of property securing repayment of the securities |
| | 11. Rating changes |

D. Notice of Failure to Provide Annual Financial Information as Required

E. Other Secondary Market Information (Specify): _____

I hereby represent that I am authorized by the issuer or obligor or its agent to distribute this information publicly:

Issuer Contact:

Name _____ Title _____
Employer _____
Address _____ City _____ State ____ Zip Code _____
Telephone _____ Fax _____
Email Address _____ Issuer Web Site Address _____

Dissemination Agent Contact, if any:

Name _____ Title _____
Employer _____
Address _____ City _____ State ____ Zip Code _____
Telephone _____ Fax _____
Email Address _____ Relationship to Issuer _____

Obligor Contact, if any:

Name _____ Title _____
Employer _____
Address _____ City _____ State ____ Zip Code _____
Telephone _____ Fax _____
Email Address _____ Issuer Web Site Address _____

Dissemination Agent Contact, if any:

Investor Relations Contact, if any:

Name _____ Title _____
Telephone _____ Email Address _____