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COMMISSION

# ACHIEVING THE GRADE: SCHOOL DISTRICT CONTINUING DISCLOSURE PRACTICES IN TODAY'S MARKET

NOVEMBER 14, 2012  
10:00 – 11:45 AM PT

ANY TECHNICAL ISSUES CONTACT GO-TO-MEETINGS:  
1-800-263-6317 OR

[HTTP://SUPPORT.CITRIXONLINE.COM/GOTOMEETING/](http://support.citrixonline.com/gotomeeting/)

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# ACHIEVING THE GRADE: SCHOOL DISTRICT CONTINUING DISCLOSURE PRACTICES IN TODAY'S MARKET

INTRODUCTION

CAPTIONING SERVICES

[WWW.STREAMTEXT.NET/PLAYER?EVENT=CDIAC](http://WWW.STREAMTEXT.NET/PLAYER?EVENT=CDIAC)

CERTIFICATES OF ATTENDANCE

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# ACHIEVING THE GRADE: SCHOOL DISTRICT CONTINUING DISCLOSURE PRACTICES IN TODAY'S MARKET

MODERATOR: LYN GRUBER, PRINCIPAL  
KOPPEL & GRUBER PUBLIC FINANCE

SPEAKERS:

DON FIELD  
PARTNER  
ORRICK, HERRINGTON & SUTCLIFFE LLP

FRANK VEGA  
SENIOR VICE PRESIDENT  
PIPER JAFFRAY & COMPANY

GEORGE GREER  
PARTNER-SECURITIES LITIGATION & ENFORCEMENT  
ORRICK, HERRINGTON & SUTCLIFFE LLP

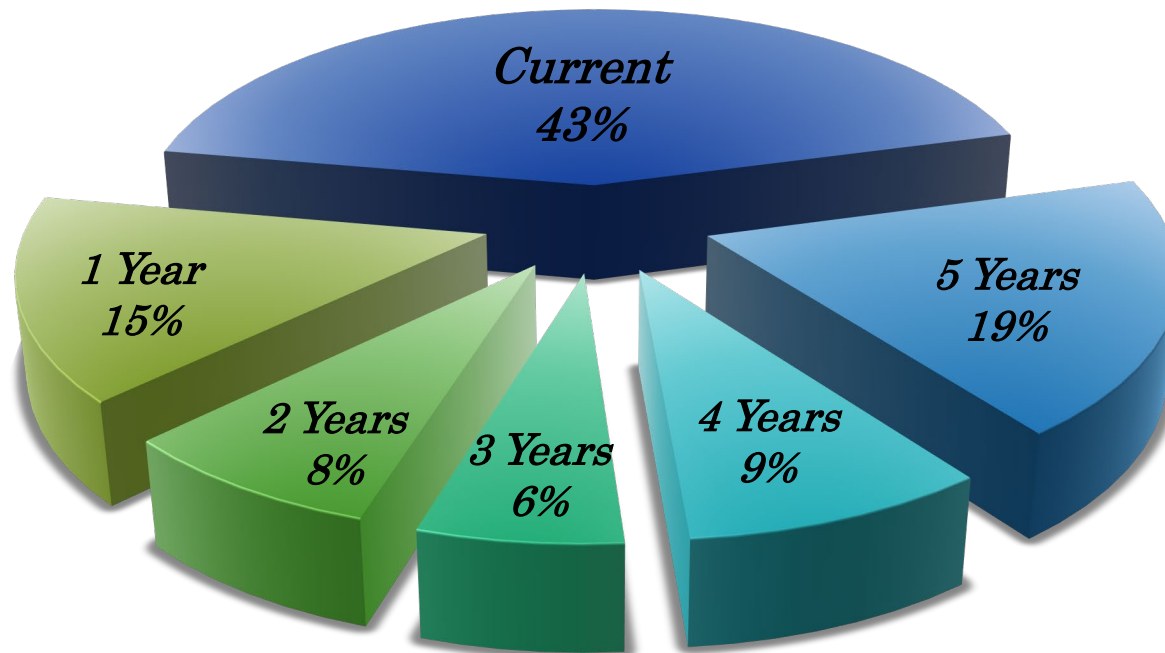
# PURPOSE OF WEBINAR

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- Education on the process and the issuer's role
- SEC is stepping up enforcement
- Recent Studies
  - Missing Disclosure is on the rise
  - Economic climate and disclosure submission
  - Due dates for new issues are being pushed later, making information less relevant

# 2005-2009 DELINQUENT FILINGS

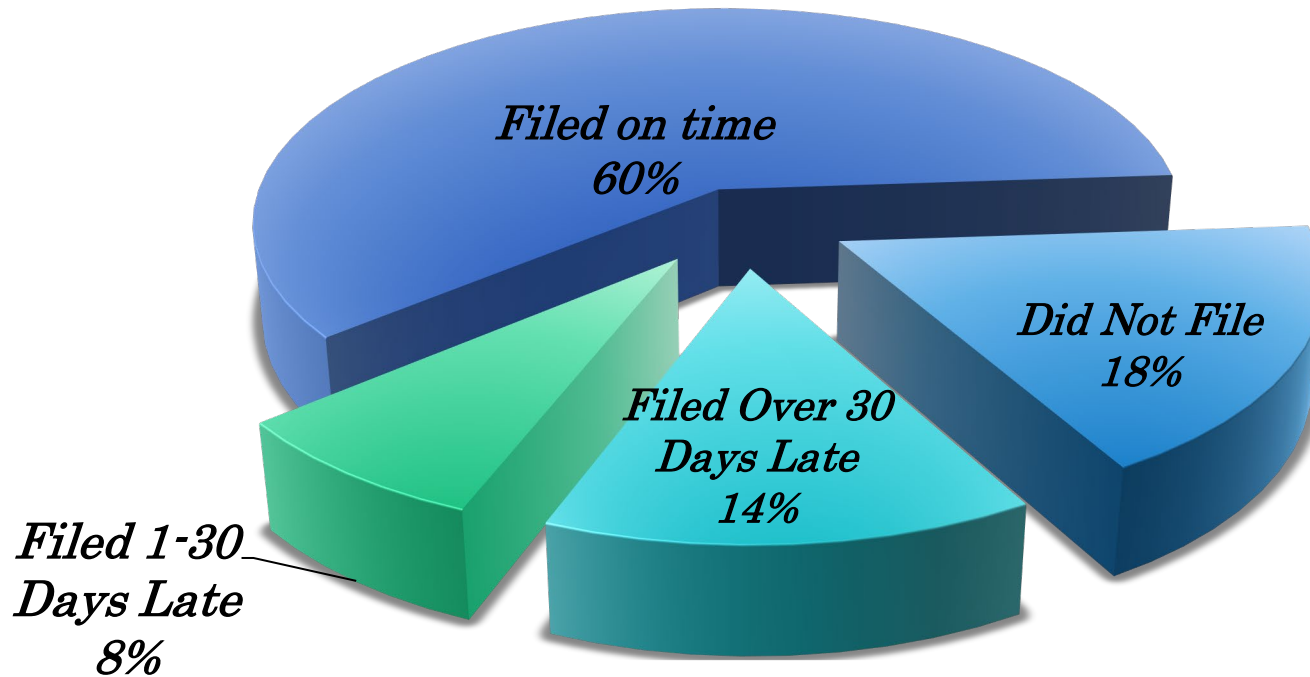
5



➤ Compliance has decreased

# CDIAC CAFR FILINGS STUDY

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- School Districts are late or not filing at higher rates than other market sectors

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## PANELIST:

DON FIELD  
PARTNER

ORRICK, HERRINGTON & SUTCLIFFE LLP

November 14, 2012

# DISCLOSURE OBLIGATIONS IN GENERAL

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- Issuers are not obligated to make disclosures unless required to do so by law or agreement
- Antifraud Rules
  - Section 17(a) of the Securities Act of 1933
  - Rule 10b-5 promulgated by the SEC pursuant to Section 10 of the Securities Exchange Act of 1934
  - Section 14(e) of the Securities Exchange Act of 1934
- Generally no obligation to provide post-issuance disclosure unless issuer agrees to do so



# CONTINUING DISCLOSURE UNDERTAKING

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- SEC Rule 15c2-12 requires participating underwriters of municipal securities, in a principal amount of \$1 million or more, to “reasonably determine” that each issuer or any other “obligated person” has undertaken in a written agreement for the benefit of holders of the securities to provide specific categories of ongoing information
- Thus, underwriters require issuers of municipal securities to undertake continuing disclosure obligations pursuant to a Continuing Disclosure Agreement or Continuing Disclosure Certificate

# REASONS FOR CONTINUING DISCLOSURE

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- For investors to make informed, intelligent investment decisions in the secondary market, it is important that periodic, continuing disclosure be available
- The secondary market has impaired efficiency when there is lack of continuing information
- Incomplete information impacts pricing with the likelihood that pricing will inaccurately reflect value

# OBLIGATED PERSONS

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- An “obligated person” is defined to mean “any person ... who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all or part of the obligations on the municipal securities to be sold”
- It is generally accepted that a person’s obligations must be for a material portion of the annual debt service in order for that person to be an obligated person
- A passive taxpayer is not an obligated person, even if the taxpayer represents a significant portion of the issuer’s tax base

# REQUIRED ONGOING INFORMATION

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- Four specific categories of ongoing information:
  - Certain “annual financial information,” of the type presented in the official statement, for each obligated person for whom financial information or operating data is presented in the final official statement, or for obligated persons meeting certain objective criteria
  - Audited financial statements when and if available for each such obligated person
  - Notice “in a timely manner not in excess of ten business days after the occurrence of” certain types of events that are likely to be material to bondholders or potential investors
  - Notice of any failure to file the required annual financial information on or before the date specified in the written agreement

# WRITTEN AGREEMENT OR CONTRACT

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- Issuer agrees to provide required ongoing information
- Written agreement or contract must also:
  - Identify each person for whom annual financial information and notices of material events will be provided
  - Specify, in reasonable detail, the type of ongoing financial information to be provided
  - Specify, in reasonable detail, the accounting principles pursuant to which the financial statements will be prepared, and whether the financial statements will be audited
  - Specify the date on which the annual financial information for the preceding fiscal year will be provided
- May also provide that the continuing disclosure obligation may be terminated with respect to any obligated person, if and when such person no longer remains an obligated person

# AGREEMENT OR CERTIFICATE

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- Agreement with *Dissemination Agent*
  - Often the Bond Trustee
  - Responsible for providing information to market through MSRB's EMMA system
- Issuer has the option to execute a Continuing Disclosure Certificate instead of a Continuing Disclosure Agreement
- It is a certification instead of an agreement with a third party
- Issuer can assume dissemination responsibility in the Certificate or appoint a Dissemination Agent

# ELECTRONIC MUNICIPAL MARKET ACCESS

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- Electronic Municipal Market Access (EMMA)
- Centralized online source for municipal bond information
- Increases availability and transparency
- Free to users

# ELECTRONIC MUNICIPAL MARKET ACCESS

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- Electronic posting of reports, significant events, voluntary information and other information
- Accessed through Municipal Securities Rulemaking Board (MSRB) Gateway

<http://emma.msrb.org>



# EXCEPTIONS TO POST-ISSUANCE DISCLOSURE RULES

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- Securities maturing in 270 days or less (typically, commercial paper notes) are exempt from the ongoing disclosure requirements, as are certain privately placed securities
- Although Rule 15c2-12 was amended effective December 1, 2010 to include new issues of variable rate demand bonds, such bonds that were outstanding as of November 30, 2010 can be remarketed or reoffered without a continuing disclosure undertaking so long as the bonds continuously maintain a \$100,000 minimum denomination and tender rights of nine months or less
- Certain short-term securities (with maturities of 18 months or less) are subject to lesser ongoing disclosure requirements

# ANNUAL REPORT

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- Contents of Annual Report detailed in Continuing Disclosure Agreement
- Generally consists of:
  - Audited Financial Statements
  - Other annual information of the type presented in the official statement
- Due date of the Annual Report is detailed in the Continuing Disclosure Agreement, but most issuers agree to provide within six to nine months after end of fiscal year

# OTHER ANNUAL INFORMATION

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- There are various types of school district financings
  - Certificates of Participation
  - General Obligation Bonds
  - Community Facility Districts
  - BANs and TRANs
- Other annual information varies based on the type of financing

# OTHER ANNUAL INFORMATION - COPS

20

- District Financial and Operating Information
  - Adopted Budget
  - Outstanding Obligations
  - Average Daily Attendance
  - Base Revenue Limit
  - District Employees
  - Assessed value of taxable property
  - CalPERs and CalSTRs Information
  - Investment Policies and County Pool Information

# OTHER ANNUAL INFORMATION – G.O.

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- Property Tax Information
  - Assessed value of taxable property
  - Taxpayer information
  - Property tax levies, collections, and delinquencies
- County Information
  - Teeter Plan, if any
  - County Investment Pool

# OTHER ANNUAL INFORMATION - CFD

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- Bond Information
  - Outstanding Bonds
  - Reserve Fund Balance
- Community Facilities District Information
  - Total Assessed Value
  - Special Tax Delinquency
  - Foreclosure Proceedings Summary
  - Land Ownership Summary

# OTHER ANNUAL INFORMATION - NOTES

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- Issuer of Notes not required to enter into CDA if Notes are in authorized denominations of \$100,000 or more and have maturity of nine months or less
- If Notes have a stated maturity of 18 months or less, only required to provide event notices
- Otherwise, other annual information based on the type of notes

# CONTINUING DISCLOSURE AND THE ANTIFRAUD RULES

- The antifraud rules apply to disclosures reasonably expected to reach investors and the trading markets
- Annual reports and material event disclosures must therefore be accurate and not omit any material information needed to make the disclosures not misleading
- Issuers are not required to disclose all material information, but the information that is disclosed must not be misleading



# SIGNIFICANT EVENTS NOTICES

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- In a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the securities being offered:
  - Nine events in all cases
  - Seven events, if material

# SIGNIFICANT EVENTS NOTICES – ALL CASES

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- Principal and interest payment delinquencies
- Unscheduled draws on debt service reserves reflecting financial difficulties
- Unscheduled draws on credit enhancements reflecting financial difficulties
- Substitution of credit or liquidity providers, or their failure to perform
- Adverse tax opinions or issuance by the Internal Revenue Service of proposed or final determination of taxability or a Notice of Proposed Issue (IRS Form 5701 TEB)
- Tender offers
- Defeasances
- Rating changes
- Bankruptcy, insolvency, receivership or similar event of the obligated person

# SIGNIFICANT EVENTS NOTICES – MATERIAL

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- Unless described in bullet 5 on the previous slide, other material notices or determinations by the IRS with respect to the tax status of the bonds or other material events affecting the tax status of the bonds
- Modifications to rights of holders of the bonds
- Optional, unscheduled or contingent bond calls
- Release, substitution, or sale of property securing repayment of the bonds
- Non-payment related defaults;
- The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms
- Appointment of a successor or additional trustee or the change of name of a trustee

# VOLUNTARY DISCLOSURE INCENTIVES FOR COMPLIANCE

- SEC Rule 15c2-12 requires that any instances of material noncompliance with continuing disclosure undertakings be disclosed in each of the issuer's official statements for a period of five years following the noncompliance, even if the noncompliance has been cured
- Careful and diligent attention to each continuing disclosure undertaking can improve an issuer's relations with investors for future financings
- Providing updated and accurate information on a timely basis is of great value to investors and confirms that the issuer is managing its affairs well

# ROLE OF SCHOOL DISTRICT STAFF

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- Provide information to dissemination agent
- Distribute annual reports and notices to Board
- Notify Board members to review and comment
- Review statements

# ROLE OF BOARD OF EDUCATION

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- Oversight
- Review documents and ask questions of staff and consultants
- Approve distribution of statements

# TIMING OF DISCLOSURE

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## Annual Reports

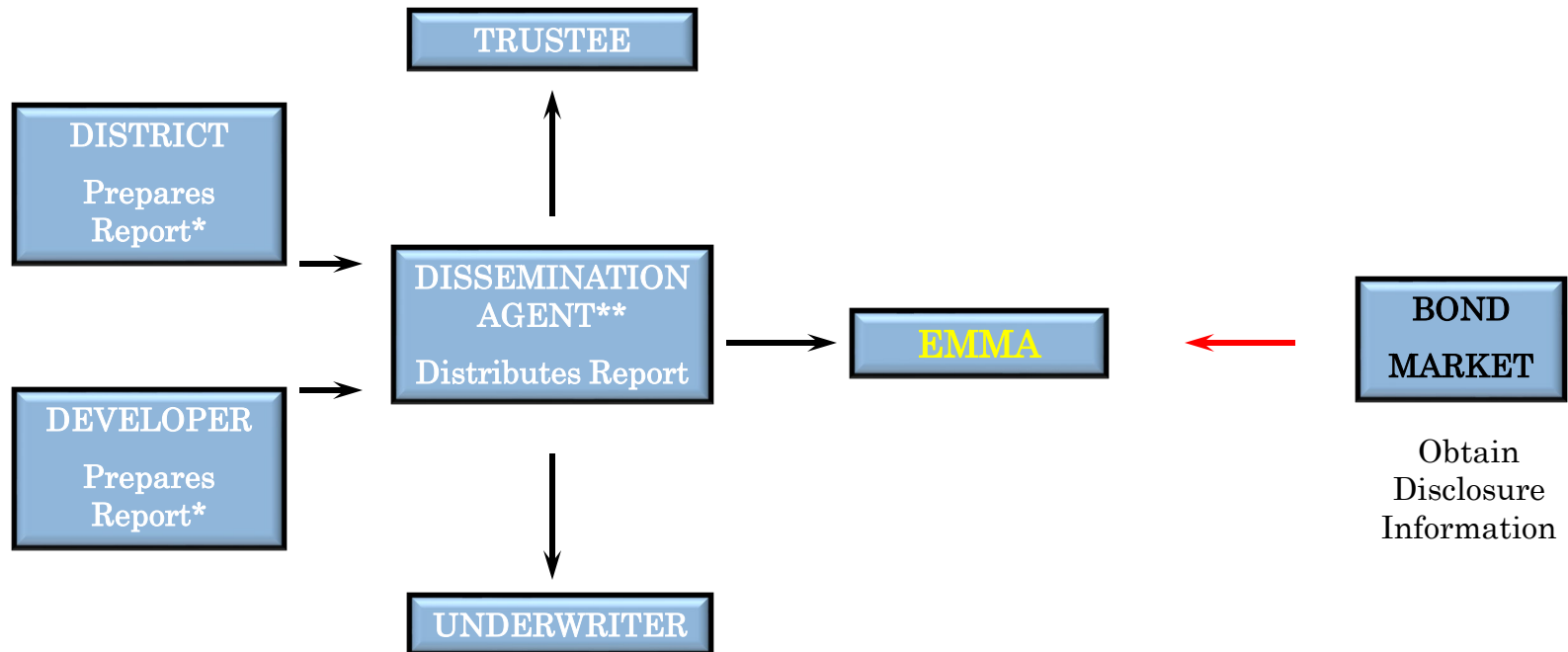
- Annually or semi-annually
- Typical due dates
  - January 31
  - March 31

## Significant Events

- Must be filed within 10 Business Days after Event

# DISCLOSURE PROCESS

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\*May be prepared by Disclosure Consultant designated by the District or obligated person (developer)

\*\*Dissemination Agent may be the District or a Disclosure Consultant designated by the District



# UNDERWRITER OBLIGATIONS

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- In August 2010, the SEC clarified and reinforced its view of the obligation of an underwriter to consider an issuer's or obligated person's record of compliance with its continuing disclosure undertakings with respect to prior bond issues in determining whether an issuer or obligated person can be relied upon to comply with its continuing disclosure undertaking on a new issue
- The SEC has made clear that the underwriters cannot rely solely on representations by an issuer or obligated person as to its compliance with continuing disclosure but should obtain evidence reasonably sufficient to determine whether and when such annual filings and event notices were, in fact, provided



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COMMISSION**

## PANELIST:

GEORGE GREER, PARTNER-SECURITIES  
LITIGATION & ENFORCEMENT,  
ORRICK, HERRINGTON & SUTCLIFFE LLP

November 14, 2012


# SOURCE OF SEC'S ENFORCEMENT AUTHORITY

- Municipal (e.g., school district) securities generally exempt from registration requirements of the Securities Act of 1933
- “Tower Amendment” to the Securities and Exchange Act of 1934 prohibits the SEC and the Municipal Securities Rulemaking Board (“MSRB”) from requiring municipal issuers to file disclosures in advance of issuing debt securities
- Anti-fraud provisions: '33 Act and '34 Act both prohibit sale of securities by use of offering materials which contain materially false information or omit material information
- '34 Act gives SEC authority to regulate dealers in municipal securities
  - SEC adopted Rule 15c2-12, which prohibits dealers from underwriting most municipal bonds unless the issuers take certain actions: provide official statement and commit to ongoing disclosures

# SEC RULE 15C2-12 CONTINUING DISCLOSURE OBLIGATIONS

- SEC's method of indirect regulation
- Requires submission of annual reports that include financial statements and other financial and operating information
- Requires notice (within 10 business days) of the occurrence of any enumerated events
- "Have not failed to comply" representations

# SEC LAUNCHED SWEEP REGARDING CALIFORNIA MUNICIPAL DISCLOSURES

 **UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
SAN FRANCISCO REGIONAL OFFICE  
44 MONTGOMERY STREET, SUITE 2800  
SAN FRANCISCO, CALIFORNIA 94104

RECEIVED  
ATTORNEY  
2012 APR 11 AM 10:31

DIVISION OF ENFORCEMENT

April 10, 2012

Via Overnight Delivery

Re: In the Matter of California Municipality Disclosures (MSF-03810)

Dear Mr. [REDACTED]:

The staff of the Division of Enforcement of the U.S. Securities and Exchange Commission is conducting a confidential, informal investigation in the above-referenced matter. In connection with this investigation, the staff requests that the [REDACTED] produce the documents specified in the attachment to this letter.

We ask that [REDACTED] provide the documents and information requested in the attachment to the following person as soon as possible, but no later than April 25, 2012:

[REDACTED]  
U.S. Securities and Exchange Commission  
Division of Enforcement  
44 Montgomery Street, Suite 2800  
San Francisco, California 94104

Please serially number (i.e., Bates stamp) each of the pages you produce. In producing documents, please include a cover letter that identifies by Bates Number which request (and where applicable, which subpart) the produced documents concern and the individual whose files were the source of the documents. Please state whether a diligent search has been made for the requested documents and whether all of the responsive documents have been produced. We ask that, if for any reason any of the requested materials are not furnished, you list and indicate the location of such materials and the reason for their non-production.

Please find enclosed a copy of SEC Form 1662, which contains important information concerning the provision of information to the Commission.

# “IN THE MATTER OF CALIFORNIA MUNICIPALITY DISCLOSURES”

- Requests for documents and information sent to a number of California municipal issuers (including a number of school districts)
- Documents and information requests focus on:
  - Compliance with annual filing and material event filing obligations
  - Representations in official statements that the issuer has not failed to make required annual filings or material event filings

# NEW ENFORCEMENT DIVISION FOCUS ON MUNICIPAL SECURITIES

- Created a specialized unit within Division of Enforcement devoted to municipal securities and public pension funds
  - 35 attorneys spread across the national office and regional offices
- Steady drumbeat of public statements from senior SEC officials emphasizing municipal enforcement agenda

# NEW TOOLS AT SEC'S DISPOSAL

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- Dodd-Frank includes a provision that authorizes the SEC to impose monetary penalties in administrative proceedings
- Whistleblower bounty program:
  - Whistleblower may receive up to 30% of recoveries greater than \$1MM
  - SEC reports receiving an average of 7 whistleblower “tips” a day — across all areas



# PREPAREDNESS ASSESSMENT

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- Compliance Training
- Document Retention Policies
- IT Systems

# FIRST STEPS UPON LEARNING OF INVESTIGATION

- Take Investigation Seriously
- Preserve Documents
- Retain Experienced Counsel
- Preserve the Attorney-Client Privilege
- Investigate Quickly and Thoroughly

# FIRST STEPS UPON LEARNING OF THE INVESTIGATION

- Evaluate taxpayer confidentiality
- Seek to Narrow the Scope of the Document Request
- Evaluate Whether there is a Duty to Disclose the Investigation

# OVERVIEW OF SEC INVESTIGATIONS

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- Sources of SEC Investigation
- Informal Inquiries
- Formal Investigations
- Wells notice and submission
- Action by the Commission

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## PANELIST:

FRANK VEGA, SENIOR VICE PRESIDENT,  
PIPER JAFFRAY & COMPANY

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November 14, 2012

# CONTINUING DISCLOSURE BEST PRACTICES

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- **School districts should adopt pro-active continuing disclosure policies:**
  - Board approved policy
  - Annual report reviewed and approved by District Board
  - Ongoing Staff training
  - Dedicated staff or qualified consultant to file required reports
- **Regulatory environment has changed, risks for school districts may include:**
  - S.E.C. inquiries today, fines and penalties later?
  - District prohibited from selling bonds
  - Investors may reject district offering, borrowing costs increase

# SAMPLE CONTINUING DISCLOSURE POLICY

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## POLICY OF THE XYZ SCHOOL DISTRICT REGARDING CONTINUING DISCLOSURE

- A. Designation of Continuing Disclosure Officer.** The Chief Business Official of the District is hereby designated by the Board to act as the official of the District with the primary responsibility for ensuring that any filings required under the Continuing Disclosure Undertakings are done in a complete and timely manner.
- B. Annual Report to Board.** At the same meeting at which the District's Audited Financial Statement is approved, and in any event no later than February 1 of each year, the Chief Business Official shall present the annual continuing disclosure report to the Board for approval. This report to the Board shall occur in a timely manner to ensure that the annual report can be submitted to the MSRB on or prior to the deadline set forth in each Continuing Disclosure Undertaking . In addition to presenting the annual report, the Chief Business Official shall report to the Board whether any significant events have occurred since the last report to the Board which required a significant event filing under any of the Continuing Disclosure Undertakings. If such event occurred, the Chief Business Official shall confirm that the required notice was filed in a timely manner, being within ten (10) business days of the event.
- C. Engagement of Dissemination Agent.** The Board directs the Chief Business Official to contract with a qualified dissemination agent experienced in the field to assist in the timely and complete preparation of annual reports and significant event notices which are required under each of the Continuing Disclosure Undertakings.
- D. Training Sessions.** In order to ensure that all obligations associated with SEC Rule 15c2-12 and the related Continuing Disclosure Undertaking are met, the Chief Business Official shall be adequately trained in the requirements of SEC Rule 15c2-12. Such training shall be provided by individuals or firms familiar with and qualified in the requirements of SEC Rule 15c2-12. With each new Continuing Disclosure Undertaking, the Chief Business Official shall meet with the District's bond financing team for the purpose of reviewing the Continuing Disclosure Undertaking and understanding its terms and requirements.

# SAMPLE OF CONTINUING DISCLOSURE ASSESSMENT

## XYZ School District

### Continuing Disclosure Summary

#### Series A G.O. Bonds

Underlying Credit Ratings:

Moody's Rating Only

Bond Insurance:

Bonds Sold with FSA Insurance

Required Cont. Disclosure Reports:

District Audit and Budget Summary

#### CUSIP Number

#### Maturity

#### Current 5-Year Filing Status

123456 AB1	8/1/2013	2006-07 Filed Late with Bloomberg on 7/23/08
123456 AC2	8/1/2014	2007-08 Audit Report Filed On-Time With Bloomberg on 3/5/2009
123456 AD3	8/1/2015	2008-09 Audit Report Filed Late with EMMA on 5/13/2010, Excerpts Included in 2010 Refunding OS on 3/18/2010
123456 AE4	8/1/2016	2009-10 Audit Report Filed Late with EMMA on 6/11/2012
123456 AF5	8/1/2017	2010-11 Audit Report Filed On-Time with EMMA on 3/31/2012
123456 AG6	8/1/2018	
123456 AH7	8/1/2019	
123456 AI8	8/1/2020	
123456 AJ9	8/1/2021	
123456 AK1	8/1/2022	
123456 AL2	8/1/2023	
123456 AM3	8/1/2024	
123456 AN4	8/1/2025	

Material Event Notice Filings:

2010 Moody's Underlying Credit Rating Upgrade Missing/Not Filed  
FSA/AGM Downgrades Filed Late with EMMA on 6/11/2012

**This Summary Needs to be Completed For Each Outstanding District Bond Issue**



# EXAMPLE OF RECOMMENDED CONTINUING DISCLOSURE LANGUAGE IN A PRELIMINARY OFFICIAL STATEMENT

The District has existing disclosure undertakings that have been made pursuant Rule 15c2-12 in connection with the issuance of the District's outstanding general obligation bonds. *The **Annual Reports for Fiscal Years 2006-07, 2008-09 and 2009-10 were not filed timely and notices of late filings were not made. In addition, the Annual Reports for Fiscal Years 2006-07 through 2010-11 did not include certain information required to be included in these reports. Further, the District did not file event notices regarding changes to the underlying ratings of certain of its bonds and downgrades of bond insurance companies that insured its bonds.***

In order to ensure that the District files any required Annual Reports or other filings required under the Rule and its undertakings in a timely and complete manner, on June 11, 2012, the District's governing board adopted a formal Board Policy Regarding Continuing Disclosure which took effect immediately on June 11, 2012. The Board Policy provides the following:

- **Designates the Chief Business Official of the District as the designated officer at the District to ensure all filings are made in a timely and complete manner;**
- **Requires Board Approval of the Annual Reports prior to March 15 of each year, together with a report to the District Board of any significant event filings in the prior year;**
- **Requires that a reputable dissemination agent be engaged by the District to assist the District in complete and timely filings; and**
- **Requires that the Chief Business Official be trained by its financing team in connection with each bond issuance to ensure that the official understands the new undertaking and its terms and requirements.**

In order to assist it in complying with its disclosure undertakings for its outstanding bonds and the Refunding Bonds, the District has engaged (**insert company**) to serve as its dissemination agent with respect to its each of its disclosure undertakings, including the Continuing Disclosure Certificate to be executed in connection with the Refunding Bonds.

# QUESTIONS



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# THANK YOU FOR PARTICIPATING!

## CHECK OUR WEBSITE FOR UPCOMING EVENTS

TO REGISTER PLEASE VISIT: [WWW.TREASURER.CA.GOV/CDIAC](http://WWW.TREASURER.CA.GOV/CDIAC)  
OR CALL (916) 653-3269

TO SIGN UP FOR CDIAC'S SEMINAR NOTIFICATION SERVICE VISIT:  
[WWW.TREASURER.CA.GOV](http://WWW.TREASURER.CA.GOV) AND CLICK ON "SIGN UP TO RECEIVE INFORMATION ON  
CDIAC SEMINARS & PUBLICATIONS"

