ANNUAL MUNICIPAL DISCLOSURE TRAINING WEBINAR

OCTOBER 14, 2025 | 10:00AM – 11:30AM

HOUSEKEEPING

SLIDES
Available on CDIAC's webinar webpage: https://tinyurl.com/25AMDT.

QUESTIONS AND POLLING
Submit your questions through the Slido panel on the 'Q&A' tab to be addressed during the designated Q&A period. Respond to polling questions on the 'Polls' tab. If you close the Slido panel, re-open it by clicking on Apps

CAPTIONING
Turn on closed captioning using the CC button at the bottom left of your screen.

CERTIFICATE OF ATTENDANCE
Sent to attendees who participate in 70% of the webinar within 2 weeks of initial airing.

WEBINAR REPLAY
A webinar replay will be available within 2 weeks of the initial air date on CDIAC's Education Portal, accessible via the webinar webpage: https://tinyurl.com/25AMDT.

TECHNICAL ISSUES
Visit Webex's Help Center at: https://help.webex.com/en-us/contact.

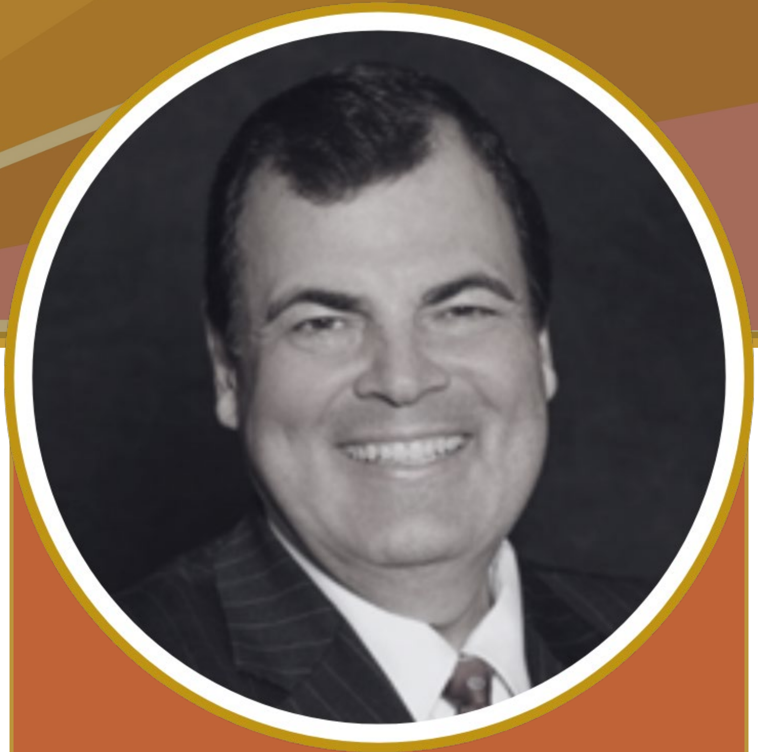
SPEAKER INTRODUCTIONS

DANIEL DEATON

Partner
Nixon Peabody LLP

JACQUELYNNE JENNINGS

Partner
ArentFox Schiff LLP



NIKOLAI SKLAROFF

Capital Finance Director
SFPUC

CULTIVATING EFFECTIVE DISCLOSURE ORGANIZATIONS

First: The Basics

- What are the federal securities laws that apply to municipal issuers?
- What is the SEC so concerned about?
- What steps should municipal issuers take to stay on track with all of this?
- Just a little on secondary market disclosure.

The Federal Antifraud Laws

- The only Federal securities laws to which municipal issuers are subject are the Federal antifraud laws.
  - Unlike corporate issuers, the SEC cannot tell municipal issuers what to put in its disclosure or require municipal issuers to obtain the SEC's approval.
- The Federal antifraud laws require that:
  - Municipal issuers use reasonable care to ensure that all of the information they prepare in connection with their bond offerings.....
    - Is "materially" accurate.... and
    - Does not omit a "material" fact that makes that information misleading.

The Federal Antifraud Laws (cont. 2 of 3)

How does securities fraud differ from other kinds of fraud?

- Not just misstatements, but also omissions
  - Evaluates the totality of the statements and considers not just whether they are accurate but also whether they are misleading
- Securities fraud can happen even when the person making a statement does not intend to have any intentionality
  - Securities fraud can be predicated on as little as negligence

What is Material?

BASIC, INC. V. LEVINSON—
"to fulfill the ***materiality*** requirement, 'there must be a ***substantial likelihood*** that the disclosure of the ***omitted fact*** would have been viewed by the ***reasonable investor*** as having ***significantly altered*** the ***'total mix' of information made available***.'"

- ***Substantial likelihood***
  - Common misunderstanding: some people think that if something is merely possible, then it needs to be disclosed.
- ***Reasonable Investor***
  - Common misunderstanding: some people think that if any investor would care about something, then it is material. Not so: the law evaluates the investor from a rational perspective of protecting its investment.
- ***Total mix of information***
  - Common misunderstanding: some people think that information is important in isolation. Materiality is an evaluation of the big picture of the credit and how specific facts fit into that larger picture.

The Federal Antifraud Laws (cont. 3 of 3)

WHAT THE SEC HAS SAID:

"Disclosure documents used by municipal issuers, such as official statements, are subject to the prohibition against false or misleading statements of material facts, including the omissions of material facts necessary to make the statements made, in light of the circumstances in which they are made, not misleading." (1994 Interpretative Release)

"Public entities that issue securities <u>are primarily liable</u> for the content of their disclosure documents and are subject to proscriptions under the federal securities laws against false and misleading information in their disclosure documents." (Orange County 21(a) Report)

What is the SEC Concerned With?

- **What are the "problem areas" of the municipal securities market?**
  - **The "Silo" Effect**
    - New Jersey, Illinois, and Kansas
  - **Internally rather than externally focused**
    - New Jersey
  - **Lack of training**
    - New Jersey, South Miami
  - **Political influence**
    - San Diego, Harrisburg, Allen Park, Miami Port Authority
  - **Staff turnover**
    - West Clark Community Schools
- **When these problems are present, the SEC has learned that it can become tough for good information to get to investors so they can make informed investment decisions….**

#1: BE INTENTIONAL AND SYSTEMATIC

- When the SEC has brought actions against well-meaning municipal officials, it has focused on process failures.
- The SEC has placed heavy emphasis on disclosure policies and procedures that ensure:
  - *Everyone who should be involved in the disclosure process is appropriately involved;*
  - *The issuer develops disclosure practice groups that review and discuss disclosure; and*
  - *Everyone involved in the process is appropriately trained so they understand the nature of the disclosure task and their particular role.*

#2: LOOK AT THINGS FROM THE INVESTOR'S PERSPECTIVE

- The Federal antifraud laws test disclosure from an investor's perspective, not the issuer's perspective.
- Materiality is defined as information that is important to a reasonable investor.
- This requires an issuer to think about its financial and operating condition from the perspective of a reasonable and rational investor purchasing its bonds.
- Several well-meaning municipal officials have violated the Federal antifraud laws just because they failed to look at the credit of the bonds from the investor's perspective.
- Municipal issuers have numerous financial stakeholders: lenders, partners, customers, employees, community. When preparing disclosure, municipal issuers need to consider what investors in their bonds need to know—as contrasted to its other financial stakeholders.

#3: KEEP THE DISCLOSURE FREE FROM POLITICS

- We have seen two examples of this recently:
  - **Overt political pressure: Port Authority**
    - The Federal antifraud violation by the Port Authority occurred by virtue of the SEC's perception of direct political pressure imposed on the officials within the Port Authority.
  - **Indirect political influence: Allen Park**
    - The Federal antifraud violation by Allen Park, Michigan was far more subtle. The mayor created a political storyline and city officials learned to solve to that storyline as "reality" rather than critically evaluate the credit for the bonds from an objective perspective.

******Politics permeate all aspects of state and local government, and even well-meaning officials can become confused by those influences without intentionally identifying those influences.***

Just a Little on Secondary Market Disclosure

SEC'S STAFF LEGAL BULLETIN FROM FEBRUARY 2020

- In February 2020, the SEC's Office of Municipal Securities Market issued a Staff Legal Bulletin that both provided guidance and showed the SEC's interest in secondary market disclosure.
- ***What is "secondary market" disclosure?***
  - ***"Secondary market" disclosure is disclosure that an issuer makes <u>after</u> it issues bonds and that investors use to trade bonds back and forth with each other instead of purchasing bonds from the issuer.***
- Municipal issuers make multiple forms of "secondary market" disclosures:
  - Annual and event-based continuing disclosure filings;
  - Voluntary posts on EMMA;
  - Investor calls, inquiries and conferences; and
  - Others.

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

- ***What did we learn from the Staff Legal Bulletin?***
  - Any statement that is reasonably expected to reach the investor community can be tested under the federal securities laws—which can involve a wide array communications such as websites and statements from officials, among others.
  - When statements alter the "total mix of information" under their circumstances, then they are going to be tested more rigorously.
  - When the issuer maintains "secondary market" disclosures that update investors concerning its financial and operating condition, then it generally means that all sorts of other statements (like press releases and newspaper articles) do not "alter" the "total mix of information" and it takes some of the pressure off of those statements that otherwise would exist.
  - SEC encourages policies and procedures.

What Does This All Come Down To?

- It is equally important to exercise reasonable care as it is not to intentionally state something that is wrong.
- Omissions are as important as misstatements.
- It is the municipal issuer's responsibility to fully disclose the credit story to investors – not the responsibility of the investor to ask.
- Investors can be harmed even if the municipal issuer makes all of its principal and interest payments—and this is a primary motivator of the SEC.
- Not only do the political or policy consequences of information not excuse its nondisclosure, the SEC is targeting those exact circumstances to bring enforcement action – in other words, it is a magnet for SEC enforcement activity.

How Do We Cultivate a Culture Where We Do This?

- Written policies and procedures
- Creation and empowerment of disclosure practices working group (“DPWG”)
- How do effective disclosure organizations assemble and draft their disclosure documents?
- How do effective disclosure organizations work with outside professionals?
- Training

Written Policy and Procedures

- Why do they have to be written?
- Steps to be taken in disseminating disclosure
- Identify the disclosure coordinator and their role. Why are they so important?
- Who are subject matter experts and what role do they play in good disclosure?
- Identify the members of the Disclosure Practices Working Group and their roles and responsibilities (more on that next)
- What is the role of senior management and governing body members?
- Why is documentation important and what are some ways it is done?
- Periodic review of policy

Creation And Empowerment of Disclosure Practices Working Group (“DPWG”)

- How do you choose the right members of the DPWG?
- What should be the responsibilities of the DPWG?
- What should meetings of the DPWG involve and what should they not involve?
- How do you make meetings of the DPWG effective so that they meaningfully inform investors?

How To Assemble and Draft Disclosure

- How to prevent disclosure preparation from becoming a stale copy and paste exercise?
- What role do subject matter contributors play?
- Who internally should lead the effort?
- What are other pitfalls and lessons learned?

How to Interact with Outside Professionals When it Comes to Disclosure

- Why are outside professionals important to the disclosure process?
- What are some ways that a municipal issuers can inappropriately rely or defer to outside professionals?
- What some ways to encourage valuable contributions from outside professionals?
- What are some ways that municipal issuers should rely on outside professionals and what should municipal issuers do to make sure that they appropriately carry out that reliance?

How to Train the Organization as a Whole?

- How to train the DPWG and those staff who are directly involved in the preparation of the disclosure?
- How to train subject matter experts or staff who only review and contribute to a small section of disclosure?
- How to train senior management?
- How to train governing bodies?

QUESTIONS?

Enter your question into the **'Q&A' tab** of the Slido panel to be addressed by today's panelists.

If your Slido panel is closed, **re-open it by pressing "Apps"** at the bottom right of your screen.

THANK YOU

Please complete the Slido survey

UPCOMING EVENTS

24th Annual CDIAC Pre-conference to
***The Bond Buyer's* 35th Annual California Public Finance Conference:**
Finance Strategies to Weather the Storm of Childhood Assault Claims
November 3, 2025 | San Diego

Fundamentals of Public Funds Investing
January 28–29, 2026 | Costa Mesa

For more information, visit:
treasurer.ca.gov/CDIAC/Education