



On-Going Administration of Bonds and Other Debt

**CDIAC ABCs of School Debt Financing  
Ontario – February 6, 2009**



## What To Get From This Session

- **Your role and responsibilities**
- **Professionals and others who can help**
- **When in doubt, ask**



## What We'll Be Discussing

- **Continuing disclosure**
- **Tax law –**
  - **Private Use**
  - **Private Loan**
  - **Arbitrage and Rebate**
- **Project Management**
- **Tax Levies**
- **Accounting Issues**



## Continuing Disclosure



### **Overview**

- **Rule 15c2-12**
- **Duty to update**



## Continuing Disclosure (cont'd)



### **Annual report**

- **What to include**
  - **Audit**
  - **Other Specified Information**
- **When to file**
- **How / where to file**
  - **Central Post Office (Pre 7/1/09)**
    - **[www.disclosureusa.org](http://www.disclosureusa.org)**
  - **NRMSIRS (Pre 7/1/09)**
    - **Nationally Recognized Municipal Securities Reporting**
  - **MSRB EMMA System (7/1/09)**
    - **[emma.msrb.org](http://emma.msrb.org)**



## Continuing Disclosure (cont'd)

### **Material events**

- ◆ **Be aware of 11 events**
  - ◆ **Rating changes (underlying OR credit-enhanced rating)**
- ◆ **Consult with professionals**
- ◆ **Requires filing upon happening of event**



## Continuing Disclosure (cont'd)

### **Compliance regime**

- ◆ **Understand obligations**
- ◆ **Assign responsible officer**
- ◆ **Hire consultants**



## Continuing Disclosure (cont'd)

### **Failure to comply**

- ◆ **Disclosure requirement for 5 years**
- ◆ **Statements to the Market – Potential Fraud Liability**





# Federal Tax Law Compliance

## **General Principles**

- ◆ **No Private Use (5% exception)**
  - ◆ **Sale**
  - ◆ **Subleases**
  - ◆ **Management Contracts**
- ◆ **No Private Loan**
  - ◆ **E.g., sale or lease of surplus property**



## Federal Tax Law Compliance (cont'd)

### ➤ **Arbitrage/Rebate**

#### ➤ **Arbitrage**

➤ **The investing of bond proceeds at an interest rate above the bond yield**

➤ **Bond Yield** **5%**

➤ **Investment Rate** **6%**

➤ **Arbitrage** **1%**

#### ➤ **Rebate**

➤ **Return to federal government all arbitrage not fitting within an exception**

➤ **Spending exceptions 6, 18 and 24 month**



## Federal Tax Law Compliance (cont'd)

### **Arbitrage Rules**

#### ◆ **Construction Fund**

##### ◆ **Yield Restriction after 3 years**

#### ◆ **Debt Service Fund**

##### ◆ **Annual Cleanout**

##### ◆ **Invested Sinking Fund**







## Accounting and Reporting Issues

- ⚡ **Understand arbitrage and rebate rules**
- ⚡ **Tax laws to know and adhere to**
- ⚡ **Track each project with unique accounting codes**
  - **Sub-fund: each debt issuance**
  - **Cost center: each construction project**
- ⚡ **Use a calendar based tracking system**



## Avoiding Arbitrage Situations

-  **Know your arbitrage window**
  - **6, 18 or 24 months?**
  
-  **Issue only the amount you need for the next window**
  - **but allow for delays, increases, change orders, etc.**
  
-  **Work closely with your facilities manager, architect, contractors**
  
-  **Establish a project tracking system**
  - **Will be useful later if you need to litigate for errors & omissions, critical delays, etc.**



# Example Planned Schedule

2001												2002												2003											
J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D					

Demo/Grading = \$500,000

6/25 6/30

Concrete Footings/S.O.G./Underground = \$1,500,000

7/7 10/28

Structural Steel = \$1,000,000

10/27 11/26

Plumbing = \$500,000

11/11 \$500,000

Framing = \$500,000

1/1 4/21

1/13 2/10

Insulation/Drywall = \$500,000

F.H.: 2/25 5/12

4/22 7/8 Electrical / HVAC = \$1,500,000

Roofing = \$400,000

4/22 6/2

Finishes = \$600,000

4/22 10/31

- Planned Dates
- Actual Dates
- Sporadic Work
- Critical path

Track plan vs. actuals

Anticipate magnitude of progress payments

Sequence: Concrete then Framing then Finishes

Total Needed thru 18 months = \$7 million (but don't box yourself in)



## Federal Tax Law Compliance (cont'd)

### ➤ **Consequences of Failure to Comply**

➤ **IRS Audit**

➤ **Taxability of Bonds**

➤ **Penalties**



## Tax Levies

### **Setting Annual Tax Rates**

- ◆ **Submit to County Auditor by August 10**
- ◆ **General Obligations**
- ◆ **Mello-Roos Bonds**
- ◆ **Provide Instructions**
- ◆ **Track Earnings for Arbitrage Rebate Compliance**