



Presentation to the CDIAC Municipal Market Disclosure Conference

External Communication with the Public Market

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Rule 10b5

“It shall be unlawful for any person . . .

- a) To employ any device, scheme or artifice to defraud,**
- b) To make any untrue statement of a material fact or to omit to state a *material* fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading”**

The “Materiality” Standard

- “[w]hether or not there is a substantial likelihood that a reasonable investor or prospective investor would consider the information important in deciding whether or not to invest.”
- Materiality is determined in context of all the facts and circumstances, but usually on a retroactive basis
- Guidance comes primarily from court decisions and SEC enforcement cases

When Do Disclosure Rules Apply?

- **New offerings**
- **Annual Report under Rule 15c2-12**
- **Any other circumstance where an Issuer is “speaking to the market” (“reasonably expected to reach the market”)**
 - Has to be an official with responsibility for such disclosures
 - Should not include statements made in other, non market-driven context
 - At this time, securities law does not impose a requirement to update or correct any statement previously made, if there is no other reason to be making a statement to the market

Content of Annual Reports

- **Audited Financial Reports**
- **Information (i.e. tables) identified in Continuing Disclosure Undertaking**
- **Additional voluntary information**
- **Consider Rule 10b5 implications – is there more you should be saying?**
- **Has anything happened since the date of the audited financial reports that has materially impacted your financial condition?**

Websites

- No obligation to provide a website
- Tension between market (and SEC) desire for transparency, and potential issuer liability
- Can be viewed as “speaking to the market” – particularly if called “Investor Relations” or “Bond Information”
- Clearly identify the date of information
- Include disclaimers, but understand that they don’t provide complete defense
- **DON’T HAVE A WEBSITE IF YOU ARE NOT PREPARED TO DEDICATE SUFFICIENT RESOURCES TO ITS MAINTENANCE**

Investor Communications

- No obligation to do it
- Tension between market (and SEC) desire for transparency, and potential issuer liability
- No corollary to Regulation FD (requiring public companies to disseminate specified information which it provides to any investor)
- Establish a single point of contact
- Consider voluntary dissemination of information provided to specific investors