

CDIAC

**CALIFORNIA
DEBT AND
INVESTMENT
ADVISORY
COMMISSION**

GOOD DISCLOSURE: IT'S IN THE PROCESS

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PRELIMINARY CONSIDERATIONS

A. Comply with legal requirements (content and timing)

- a. Securities Act of 1933 objective was to provide investors with full disclosure of material facts about securities offered and sold.
- b. In 1934, Securities Exchange Act of 1934 that created the SEC with broad authority over most aspects of the securities industry.
- c. Issuers are subject to liability under the anti-fraud provisions of the Securities Acts. Rule 10b-5 requires the disclosure of all material facts and prohibits the omission of facts necessary to make statements not misleading

B. Provide full and accurate information for an informed investment decision at time of issuance.

The Securities Acts do not detail the extent of liability nor the information an issuer must disclose. Courts have consistently held that an omitted fact is "material" if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision.

C. Establish and maintain good investor relations

Continuing disclosure improves relations with investors and analysts. *The provisions of Rule 15c2-12 set a floor, not a ceiling. Common-sense approaches to disclosure also serve ethical considerations and the issuers' self-interests, in keeping their investors and constituents alike current and fully informed."*

STRUCTURING THE PROCESS

A. For all Debt Issuance of the Issuer:

i. **Establish Debt Issuance Policies**

- Create a Debt Policy to establish comprehensive guidelines for the issuance and management of the Issuer's bonds, COP's and other obligations for borrowed money
- Legal Authority; Compliance with Laws, Resolutions, and Contracts
- Administration of Debt Policy
- Purposes for Bonds
- Types of and Limitations on Bonds
- Terms and Provisions of Bonds
- Maintenance of Liquidity; Reserves
- Investment of Bond Proceeds and Related Moneys
- Third Party Credit Enhancement
- Use of Derivatives
- Methods of Sale and Pricing of Bonds
- Bond Redemption Programs
- Professional Services
- Capital Planning, Budgeting and Administration
- Credit Rating Objectives
- Relationships with Market Participants
- Periodic Review

STRUCTURING THE PROCESS (cont.)

ii. Establish Standing Committee(s)

- The Issuer should appoint a “contact person” for assignment, also departments with “Skin in the Game” including:
 - City Manager
 - Accounting
 - Budget
 - Auditor
 - Treasurer
 - Controller
 - Attorney
 - Community Development
 - Department Chief

STRUCTURING THE PROCESS (cont.)

B. Deal-Specific Process

i. Determine what's being financed

- ❑ Refer to Debt Policy to determine legality of Project. (i) Purpose, Types of and Limitation on Bonds, Terms, Method of Sale.

ii. Identify participating Issuer staff

- ❑ Project will determine other than base staffing personnel

iii. Identify/select outside professionals

- ❑ The Issuer should consult their Financial Advisor to help solicit other professional Services.
 - Financial Advisors
 - Bond Counsel, Disclosure Counsel and Other Legal Counsel
 - District Consultant
 - Bond Trustees and Fiscal Agents
 - Underwriters
 - Feasibility Consultants
 - Arbitrage Rebate Services Providers
 - Other Professional Services as Required

STRUCTURING THE PROCESS (cont.)

iv. Identify scope and sources of material information for Official Statement (including appendices)

- ❑ Bond Counsel, Underwriter Counsel and the Financial Advisor will assist the Issuer and their Financing Team with gathering information for the Official Statement. Information may include:
 - Identify Primary contact person for needed Information
 - Past 5 years of Financial Statements
 - Current and Proposed Budget
 - Future Financing Plans
 - Continuing Disclosure Update
 - Pension Obligations Update
 - OPEB Update
 - Property Tax Information/Appeals/Delinquencies

v. For continuing disclosure, determine

- ❑ Compliance with the Issuer's continuing disclosure requirements, consistent with SEC Rule 15c2-12, in connection with each issue of bonds

CONTINUING DISCLOSURE

1) Contents of annual reports

- ❑ Rule 15c2-122 requires two types of ongoing disclosure: (1) an annual report which contains the audited financial and other operating and financial data; and (2) certain events with notices to EMMA in not more than 10 business days after the occurrence of any of the listed events.
 - Principal and interest payment delinquencies
 - Non-payment related defaults, if material
 - 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, IRS notices or material events affecting the tax status of the security
 - Modifications to rights of security holders, if material
 - Bond calls, if material and tender offers
 - Defeasances
 - Release, substitution or sale of property securing repayment of the securities, if material
 - Rating changes
 - Bankruptcy, insolvency, receivership or similar event of the obligated person

CONTINUING DISCLOSURE (cont.)

2) **Deadline and procedures for disseminating annual reports**

- ❑ The deadline for making financial information (such as audited annual financial statements) available is often established by agreement between municipal issuers and the underwriter. Most municipal issuers are able to file on EMMA their annual financial information, including financial statements, within the deadlines set forth in their continuing disclosure agreements, these deadlines are generally set at 180 to 270 days after the end of the issuer's fiscal year.

3) **Whether a deal involves an “obligated person”**

- ❑ Conduit revenue bonds that are issued by a municipality or an agency of a municipality on behalf of a third party (often called a “conduit borrower” or “obligated person”). The same Disclosure Rules apply.

PARTING DISCLOSURE THOUGHTS

- ❑ Be Proactive
- ❑ Be Transparent