



CDIAC

**CALIFORNIA
DEBT AND
INVESTMENT
ADVISORY
COMMISSION**

STEPS AND CONSIDERATIONS IN CRAFTING THE INITIAL DISCLOSURE DOCUMENTS

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CDIAC Municipal Market Disclosure

The Development and Administration of Debt Disclosure Policies

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**MUNICIPAL MARKET DISCLOSURE
AND THE IMPORTANCE OF DISCLOSURE POLICIES**

**Session Two: Steps and Considerations in Crafting
the Initial Disclosure Documents**

THE OFFICIAL STATEMENT



Do We Need An Official Statement to Sell Bonds?

- No registration requirement with Securities and Exchange Commission
- Securities and Exchange Rule 15c2-12 requires underwriters of municipal securities, prior to the sale of municipal securities, to obtain and review the issuer's 'Official Statement.'



Purpose of the Official Statement.

- Describe terms of bonds being offered to investors
- Discloses all 'material' information: issuer, security, financial/operating data, risks and other information relevant to investment in bonds
- Assist with soliciting interest in bonds



What Is 'Material' information?'

- Material information is information that a reasonable investor would consider important to an investment decision.
- The 'materiality' of information will be tested against anti-fraud provisions of federal securities laws. The Securities and Exchange Commission has not defined the term material.



Materiality Considerations

- Material information can be measurable against knowable financial or operating data (e.g. a percent of revenues).
- Material information/omission can show important trend
- Material information could alter decision to buy/sell obligations by reasonable investor
- The SEC has 20/20 hindsight! When in doubt, disclose.

Who Is Responsible for Contents of Official Statement?

- SEC has repeatedly emphasized it is Issuer's document
- Issuer in best position to know if information is accurate, and to ensure that material information is not omitted. Issuers may rely on the advice of professionals to a degree – cannot delegate disclosure preparation to professionals. Professionals do not conduct independent audit of information.
- It's Issuer's Story: Remember Big Picture
- Make sure 'Story' is consistent:
 - Budget/labor negotiations
 - Rating Agency presentations
 - Other stakeholder presentations



Contents of the Official Statement

- Presentation Varies by Type of Bond Offering
- General Contents:
 - Bond terms: amounts, maturity dates, interest rates, redemption provisions and rights/remedies
 - Purpose of Financing
 - Description of the Authorization for Bonds/Financing
 - Description of Security (Pledge of Taxes and/or Revenues and various limitations and enhancements of these revenues)
 - Sources and Uses of Funding
 - Description of the Issuer and its Financial Condition – Focus on Specific Source of Revenues and/or Taxes if Repayment is limited to those sources
 - Risk Factor Disclosure
 - Tax Treatment Disclosure
 - Professional Participation Disclosure
 - Material Litigation
 - Description of Continuing Disclosure Undertaking
 - Rating Disclosure
 - Appendices (Audited Financial Statement, Bond Counsel Opinion, DTC Procedures, Summaries of Legal Documents, Consultant or Feasibility Reports, Other Information of Indirect Importance)

Contents of the Official Statement (cont.)

- Other Official Statement Considerations:
 - Historical Information and Projections
 - Audited and Unaudited Data
 - Templates vs. Independent Judgment
 - Considerations in Conduit Deals
 - Current Investor Concerns (Pensions and Bankruptcy)



OFFICIAL STATEMENT PREPARATION

Preparing the Official Statement

- Roles of Participants in Primary Offering
 - Issuer
 - Underwriter
 - Financial Advisor
 - Disclosure Counsel
 - Bond Counsel
- Policies and Procedures should determine the team and define roles, responsibilities and accountability.
- Establish a Process for Ensuring the Accuracy and Completeness of the Official Statement.

Preparing the Official Statement (cont.)

- Critical Review of Official Statement – there is no boilerplate
 - What are important or unusual features of the governing structure of the Issuer? What practical limitations would there be on bondholder remedies?
 - What is the source of payment for the bonds?
 - What could happen that could fundamentally affect the source of payment (general vs. specific events).
 - What challenges are there in short, medium and long term re issuer's revenues, operations, regulatory environment?
 - Are the Right Employees and Officials Thinking About the Big Picture?
- Due Diligence
 - What is due diligence?
 - How do we know what we know?
 - What does good process achieve?

Preparing the Official Statement (cont.)

- Governing Board Approval (Timing)---Board members are viewed as final 'gatekeepers' and have responsibilities under federal securities laws and must not knowingly or negligently authorize misleading disclosure
 - What is being financed, and how much is being authorized?
 - What is impact of financing on issuer's budget?
 - What are sources of repayment?
 - What are the basic economic drivers for the issuer or enterprise that will pay back the bonds
 - Are there any unique challenges to financing?
 - Do we have appropriate controls and procedures?



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