



CDIAC

**CALIFORNIA
DEBT AND
INVESTMENT
ADVISORY
COMMISSION**

THE CONTINUING DISCLOSURE UNDERTAKING AND ONGOING COMMUNICATION WITH THE MARKET

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SEPTEMBER 8, 2016

Session Outline

- ❑ Overview of Rule 15c2-12
- ❑ Operational Considerations
- ❑ Market Communication
- ❑ Voluntary Disclosure Discussion

Overview of Rule 15c2-12



Rule 15c2-12

- Basic Requirement for Continuing Disclosure Agreement
- Content of Annual Report
- Event Notices
- Obligation to Report Prior Failures in Offering Documents (MCDC)
- “Speaking to the Market”

Basic Requirement for CDA

“A Participating Underwriter shall not purchase or sell municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that an issuer of municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement has undertaken, either individually or in combination with other issuers of such municipal securities or obligated persons, in **a written agreement or contract** for the benefit of holders of such securities, to provide the following to the Municipal Securities Rulemaking Board in an electronic format as prescribed by the Municipal Securities Rulemaking Board, either directly or indirectly through an indenture trustee or a designated agent:

(A) **Annual financial information** for **each obligated person** for whom financial information or operating data is presented in the final official statement, or, for each obligated person meeting the objective criteria specified in the undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final official statement, except that, in the case of pooled obligations, the undertaking shall specify such objective criteria;

(B) If not submitted as part of the annual financial information, then when and if available, **audited financial statements** for each obligated person covered by paragraph (b)(5)(i)(A) of this section..”

Content of Report

- “The term **annual financial information** means **financial information or operating data**, provided at least annually, **of the type included in the final official statement** with respect to an obligated person, or in the case where no financial information or operating data was provided in the final official statement with respect to such obligated person, of the type included in the final official statement with respect to those obligated persons that meet the objective criteria applied to select the persons for which financial information or operating data will be provided on an annual basis. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents available to the public on the Municipal Securities Rulemaking Board's Internet Web site or filed with the Commission.”
- Should anything else be included that isn't in the specific updates included in the Annual Report or the Audited Financials? (Discussed in “Speaking to the Market.”)

Event Filings

“(C) In a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the securities being offered in the Offering:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (7) Modifications to rights of security holders, if material;...

(continued on next page)

Event Filings (cont.)

- (8) Bond calls, **if material**, and tender offers;
- (9) **Defeasances**;
- (10) Release, substitution, or sale of property securing repayment of the securities, if material;
- (11) **Rating changes [!!!!!!!]**;
- (12) Bankruptcy, insolvency, receivership or similar event of the obligated person;
- (13) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material; and
- (D) In a timely manner, **notice of a failure** of any person specified in paragraph (b)(5)(i)(A) of this section to provide required annual financial information, on or before the date specified in the written agreement or contract.”

Obligation to Report Failures to Comply with Prior CDAs

The term *final official statement* means a document or set of documents prepared by an issuer of municipal securities or its representatives that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data; and a description of the [continuing disclosure] undertakings, if applicable, and **of any instances in the previous five years in which [the issuer] failed to comply, in all material respects, with any previous [continuing disclosure] undertakings...**

“Speaking to the Market”

- Federal Securities Law implications can arise outside the context of Official Statements:
- Public statements by officials -- depends on (i) the official making the statement, (ii) the information presented, and (iii) the audience.
- Investor website
- Annual Report

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SESSION THREE: THE CONTINUING DISCLOSURE UNDERTAKING AND ONGOING COMMUNICATION WITH THE MARKET

THOMAS G. JOHNSEN

Principal

Fieldman, Rolapp & Associates, Inc.

September 8, 2016

City of Irvine Civic Center, Irvine, CA

Timing

- **July 1995**
 - ▣ Effective date of amendments to 15c2-12 requiring Continuing Disclosure
- **Over Time**
 - ▣ Multiple Comments from investors on disclosure compliance
- **March 2012**
 - ▣ SEC National Examination Risk Alert. Strong reminder that underwriter's must act on due diligence obligations or be subject to anti-fraud provisions
- **July 2012**
 - ▣ SEC Report on Municipal Securities Market "the major challenge in secondary market disclosure...is the timeliness and completeness...as well as compliance with continuing disclosure agreements."
- **November 2014**
 - ▣ MCDC Initiative

Why Non-Compliance Occurs

- **General Lethargy**
 - ▣ After initial adoption focus and attention
 - ▣ Long term no focus
 - ▣ Not a high priority for industry or issuers
- **Staff Turnover**
 - ▣ Original staff involvement ends
 - ▣ New staff not involved in issue, no background.
 - ▣ Staff reductions overwhelm system
- **Specific Assignment**
 - ▣ Who is in charge?
- **Confusing, Imprecise or Excessive Requirements**
- **Small/Infrequent Issuer**
 - ▣ Lack of knowledge
 - ▣ Lack of staff
- **No Written Direction**
- **Financial Statement disconnect**

What To Do

- ❑ **Pay consistent and regular attention**
- ❑ **One person responsible but involve other(s)**
- ❑ **Simplify annual information, if possible**
- ❑ **Written procedures to remind and for transition**
- ❑ **3rd person double check each and every filing**
- ❑ **If you miss it, fix it**

What Could Be Next?

- **Unspent proceeds?**

