



CDIAC ONGOING DEBT ADMINISTRATION SEMINAR: CONTINUING DISCLOSURE POLICIES AND PROCEDURES, BEST PRACTICES AND PRACTICAL TIPS

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September 4, 2019

Establishing Policy and Procedures

- Why?
- Shows organization cares about compliance
- Shows organization is actively managing its compliance
- May be a mitigating factor when SEC calls
- May lessen the risk for personal liability for staff if policies are followed
- Greater attention to disclosures made for continuing disclosure compliance and for new offerings

Establishing Policy and Procedures

- Establish internal written procedures to comply with Continuing Disclosure Agreements (“CDA”)
- Identify key personnel and their responsibilities for CDA compliance
- Disclosure Team
- Review annual reports and event notices
- Review historical compliance with CDA undertakings

Establishing Policy and Procedures

- Assign a coordinator (point person)
- Monitor compliance
- Information gathering
- Communication with third parties
- Training

Establishing Policy and Procedures

- Internal Communication is Key
- Communication must be established and maintained between those who become aware of the material events and those who file the event notices
- Make your CDA required reading for any new employees that will be involved in providing information for continuing disclosure purposes

Establishing Policy and Procedures

- Create a template/chart for annual compliance and event notices to be reported
- Review each CDA and identify the following:
 - For Annual / Quarterly Reports:
 - what information is required to be included in the annual/quarterly reports?
 - when are annual/quarterly reports due?
 - what information will need to be obtained from third parties?
 - who should receive copies of the annual/quarterly reports (EMMA, insurers, underwriters, rating agencies, etc.)?

Establishing Policy and Procedures

- For Event Notices:
 - What are the SEC listed events?
 - When are listed events due?
 - Who is responsible for identifying when a listed event has occurred?
 - Defeasance, bond call, and rating changes are the most common events, especially when a refunding occurs

Establishing Policy and Procedures

- For Voluntary Notices
 - discuss with counsel – determine materiality
 - carefully review the notice before submitting to EMMA
- Internal Tickler System
 - establish an internal tickler system for reporting due dates
 - utilize EMMA automated tickler system of approaching deadlines
 - third-party consultants

Establishing Policy and Procedures

- Annual Reports
 - consider providing a “roadmap” or “cross-reference” of where the required information is contained in the disclosure filing (Audit, CAFR, OS, etc.)
- Investor Communication
 - if you respond to one investor, make available to all investors
 - only communicate what’s already been disclosed
 - work with counsel

Best Practices

- Ensuring Future Compliance
 - Adopt policies and procedures and follow them
 - reduce chances of making a material misstatement or omission
 - establish a reasonable care defense for such statements or omissions
 - Know what was committed to be disclosed in the CDA and the timing of the filings (understand the Rule and what you contracted to do in your continuing disclosure agreement and by when)

Best Practices

- Ensuring Future Compliance
 - Set up a tickler system for timing of reports
 - Assign one or two point people responsible for putting together the annual report filing and for actually posting on EMMA
 - Conduct training
 - Consider hiring a third party to assist

Practical Tips

- CDA is your Responsibility!
 - After submitting your disclosure documents to the dissemination agent, check to make sure the disclosure documents appear on EMMA
 - Request / retain EMMA confirmations as evidence of compliance
 - If an OS represents your annual report, provide a notice indicating such and make sure the OS is available on EMMA by the required due date
 - EMMA is a “submitter-based” platform so make sure description of the disclosure documents is accurately reflected

Practical Tips

- CDA is your Responsibility!
 - If the annual/quarterly reports provide cross-reference to other documents (i.e. audits, budgets, etc.), make sure such other documents are also available on EMMA
 - If you cannot file your annual report on time, file the “notice of failure to file on time” on or before the required due date
 - Remedy missing disclosures as soon as practicable

Future Continuing Disclosure Agreements

- Make it easy to comply
- Make it easy for third party to determine if you've complied
- Avoid using "X" number of days after fiscal year
- Choose a date that you can comply with
- Discuss "content" with underwriter prior to executing CDA
- What information is important for future investors to trade the bonds

Future Continuing Disclosure Agreements

- Are you able to provide such information for the life of the bonds (30 years)?
- Consider availability of information from third-party sources
- Consider attaching a “template” of the report in the CDA
- If there are multiple obligated persons, clearly identify each party’s obligations

Questions?