

WHY IS THERE SO MUCH EMPHASIS ON POST- ISSUANCE COMPLIANCE

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WITH THE SECURITIES AND EXCHANGE COMMISSION....

- ***SEC has run into major failures by issuers and borrowers in providing continuing disclosure....***
 - ❑ Concerns first arose in the context of an enforcement action, but...
 - ❑ Quickly became obvious to the SEC that the continuing disclosure regime was ineffective, and then...
 - ❑ The SEC took action.

PROBLEMS IMPACTING CONTINUING DISCLOSURE

➤ *What are the “problem areas” that have caused continuing disclosure failings....*

- **The “Silo” Effect**

- Ineffective coordination among departments within an issuer or borrower.

- **“Sleeping in the fog....”**

- Issuer or borrower did not ever understand or fully appreciate its responsibilities.

- **Staff turnover**

- So much done and known by an issuer or borrower employee who then retires after several decades of experience.

WHY HAS THE SEC FOCUSED EVEN MORE ON CONTINUING DISCLOSURE IN THE LAST 10 YEARS?

- ***First, there was Harrisburg....***
 - What happened?
 - Why was it so big?
 - Openly flaunted continuing disclosure requirements....
 - Ordinary investors were really hurt by it...
 - Revealed major problems in the continuing disclosure regime....Did it have teeth? Did issuers take it seriously?
 - What did the SEC do about it?
 - Slammed Harrisburg...
 - While timing is questionable, may have influenced May 2010 15c2-12 amendments and new interpretative guidance requiring underwriters to affirmatively investigate past continuing disclosure compliance...
 - Tightened rules in the broker-dealer market...

WHY HAS THE SEC FOCUSED EVEN MORE ON CONTINUING DISCLOSURE IN THE LAST 10 YEARS?

- ***Second, the SEC investigated the market...***
 - SEC conducted studies in the municipal securities market to determine whether the continuing disclosure regime was effective.
 - Those reports indicated that there was widespread continuing disclosure failures in the municipal securities market.
 - SEC's examination office examined underwriters in the municipal securities market on these points and these examinations also indicated widespread problems in the municipal securities market.

WHY HAS THE SEC FOCUSED EVEN MORE ON CONTINUING DISCLOSURE IN THE LAST 10 YEARS?

- ***Third, there was MCDC....***
 - What happened?
 - Why was it so big?
 - It was the long-awaited nuclear bomb in our industry....
 - Demonstrated the SEC's persistence and seriousness...
 - Demonstrated the SEC's willingness to be creative....
 - What is the aftermath?
 - Well-staffed and well-funded unit at the SEC focused just on our market....
 - Commissioner focus on the market...
 - Close monitoring of our market.

WHY HAS THE SEC FOCUSED EVEN MORE ON CONTINUING DISCLOSURE IN THE LAST 10 YEARS?

- ***Finally there are the recent 15c2-12 amendments....***
 - What happened?
 - Why was it so big?
 - SEC once again reacted to investors being harmed....
 - A fundamental expansion of the kinds of listed events that previously existed...
 - SEC demonstrated ability to act quickly and with less concern with how the amendments would impact issuers and borrowers...
 - Demonstrated SEC's consistent concern with the municipal securities market across three different presidential administrations.

WITH THE INTERNAL REVENUE SERVICE....

Based on surveys and questionnaires sent to Issuers and Borrowers and other studies, the Internal Revenue Service expressed concern that there is inadequate attention paid to Post-Issuance Compliance.

- 501(c)(3) Bond Compliance Questionnaire (2007) - **49% had procedures**
- Governmental Bond Compliance Questionnaire (2009) - **only 20%**
- Direct Pay Bond Compliance Questionnaire (2010)
- Advance Refunding Compliance Questionnaire (2011)
- QSCB Compliance Questionnaire (2012)
- New IRS Report - <https://www.irs.gov/tax-exempt-bonds/teb-post-issuance-compliance-some-basic-concepts>

WITH THE INTERNAL REVENUE SERVICE....

IRS increased its emphasis on post-issuance compliance

- VCAP Program Guidelines
- 8038
- Schedule K to Form 990
- Education and Outreach
 - IRS added experienced professionals to its team
 - Improved website and training materials
 - Ongoing webinars
 - Conference attendance by IRS



SO WHAT ARE THE TAKEAWAYS?

- The regulators of the bond market are concerned that, after bonds are issued, not enough issuers and borrowers have sufficient procedures in place to ensure that they will comply with their post-issuance obligations.
- Issuers and borrowers need to:
 - ❑ Know and inventory their post-issuance obligations; and
 - ❑ Develop a reasonable process for ensuring that their post-issuance obligations will be met.
- Issuers and borrowers should develop written post-issuance compliance procedures to ensure that they can track their post-issuance obligations and comply with them.

KEY QUESTIONS TO ASK....

- Do we know **what** our post-compliance obligations are?
- Do we know **when** we are responsible to undertake those obligations?
- Do we know **who** within our organization is responsible to keep track of our compliance with these obligations?
- Do we know that the right people without our organization are appropriately involved to ensure meaningful compliance?
- Have we written down our process so everyone in our organization knows our process and if staff retires it can be handed off to others?
- Do we know that the staff responsible for post-issuance compliance understands our obligations and has the knowledge to ensure our compliance?

QUESTIONS?

