

Municipal Market Disclosure Seminar
Session Five

Internal Roles and Responsibilities of Continuing Disclosure

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Today's Agenda

- ▶ Best Practices
- ▶ Why is a Disclosure Policy Important?
- ▶ Disclosure Policies and Procedures
- ▶ Training and Recordkeeping
- ▶ Preparation of Continuing Disclosure Documents

GFOA Best Practices

- ▶ Government Finance Officer's Association (GFOA) understands the importance of Disclosure
 - ▶ Located at <https://www.gfoa.org/best-practices>



BEST PRACTICE

Understanding Your Continuing Disclosure Responsibilities

Notice:

Issuers of municipal securities should be aware of new disclosure requirements in SEC Rule 15c2-12, effective on securities issues on or after February 27, 2019. GFOA recommends issuers consult counsel prior to the effective date to determine how these changes may impact debt portfolios and debt management policies and procedures.

The Continuing Disclosure Agreements will include affirmation by governments for debt issues on or after February 27, 2019 to:

- disclose additional information about material financial obligations (e.g., guarantees, capital leases, and bank loans) for securities entered into



BEST PRACTICE

Post-Issuance Policies and Procedures

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Issuers of municipal securities should be aware of new disclosure requirements in SEC Rule 15c2-12, effective on securities issues on or after February 27, 2019. GFOA recommends issuers consult counsel prior to the effective date to determine how these changes may impact debt portfolios and debt management policies and procedures.

The Continuing Disclosure Agreements will include affirmation by governments for debt issues on or after February 27, 2019 to:

- disclose additional information about material financial obligations (e.g., guarantees, capital leases, and bank loans) for securities entered into after the effective date
- make event filings of any changes reflecting financial difficulties should any occur to

GFOA Best Practices

Understanding Your Continuing Disclosure Responsibilities

- Have a clear understanding of YOUR agency disclosure requirements
- Develop continuing disclosure procedures
- Understand each bond issue
- Timely completion of audited financial statements
- Required timing commitments
- Event notices
- Primary disclosure regarding any material non-compliance

Other Practices

- ▶ Complete Audited Financial Information within 6 months of fiscal year end
- ▶ 10-Day Notice Requirement for pre-December 1, 2010 transactions

Why is a Disclosure Policy Important?

- ▶ See NABL - “Crafting Disclosure Policies”:

<https://www.nabl.org/DesktopModules/Bring2mind/DMX/Download.aspx?PortalId=0&TabId=176&EntryId=1008>

- ▶ Tool provided to facilitate compliance with federal securities laws
- ▶ Currently no statutory requirement under the federal securities laws that issuers adopt written disclosure policies and procedures - Strongly encouraged by SEC

Why is a Disclosure Policy Important?

- ▶ Why Disclosure Procedures and Training?
 - ▶ Best Practices
 - ▶ Issuers may receive better reception in the marketplace
 - ▶ Minimizes the risk of misleading disclosure
 - ▶ Provides a defense against a charge of negligence or recklessness
 - ▶ The SEC and its staff have emphasized the importance of disclosure policies for issuers

Why is a Disclosure Policy Important?

▶ SEC Enforcement

- ▶ SEC has imposed training and procedures in various settlements, including settlements under the Municipalities Continuing Disclosure Cooperation Initiative
 - ▶ The MCDC Initiative, announced in March 2014, offered favorable settlement terms to municipal bond underwriters and issuers that self-reported violations.
 - ▶ The SEC accepted self-reporting questionnaires starting on March 10, 2014. Underwriters had until September 10, 2014 to comply, and issuers had until December 1, 2014.
- ▶ The Enforcement Division has stated there will be substantial enforcement activity following the close of the MCDC Initiative
- ▶ The SEC has established a 30-person unit in the Enforcement Division dedicated to Municipal Disclosure

Why is a Disclosure Policy Important?

- ▶ The policies adopted should be sound and appropriate to the issuer, and the issuer should make good faith efforts to follow them
- ▶ The Issuer should comply with its Disclosure policies to demonstrate its ability to adhere to its own guidelines.

Disclosure Policies and Procedures

- GFOA Best Practice: Develop and adopt formal, written post-issuance compliance policies and procedures
- ▶ General considerations
 - ▶ Agency size, resources and borrowing frequency
 - ▶ In-house or third-party provider support
- ▶ Responsible staff should be identified
- ▶ Identify source of requirements to be monitored

Disclosure Policies and Procedures

- ▶ Identify the frequency of the actions to be undertaken
- ▶ Monitor for changes in laws and regulations
- ▶ Establish a deadline reminder system
- ▶ Identify records to be maintained and the record retention period

Disclosure Policies and Procedures

- ▶ Establish a deadline reminder system
- ▶ Identify records to be maintained & the record retention period
- ▶ Required training
- ▶ Procedures to identify and correct violations

Disclosure Policies and Procedures

- ▶ Defining the Large and Small Issuer
- ▶ More Expansive Disclosure Policies for Large Issuers
 - ▶ Core Elements are the same
 - ▶ Additional specific items for large issuers to incorporate supplemental procedures for websites and rating presentations
 - ▶ Disclosure Group comprised of officials and counsel for review of disclosure filings
 - ▶ Communications to staff regarding disclosure statements

Disclosure Policies and Procedures

- ▶ What should Disclosure Policies and Procedures cover?
 - ▶ Primary offering documents
 - ▶ Continuing disclosure filings
 - ▶ Audited financial statements
 - ▶ Websites
 - ▶ Other statements reasonably expected to reach the investment community
 - ▶ OMS Bulletin 21

Training and Recordkeeping

▶ Importance of Training

- ▶ What does continuing disclosure mean to the agency?
- ▶ What happens when disclosure is not handled properly?

▶ Extends beyond you

- ▶ Elected Officials
- ▶ Management

▶ Delivery of Training

In-House Preparation of Continuing Disclosure

- ▶ Read your Continuing Disclosure Agreement
- ▶ Incorporate elements into Comprehensive Annual Financial Report
- ▶ Identify the key internal staff person responsible to complete Continuing Disclosure report
- ▶ Obtain bond counsel's review
- ▶ File on time!

Outsourcing Preparation of Continuing Disclosure

- ▶ Read your Continuing Disclosure Agreement (“CDA”)
 - ▶ Ultimate responsibility for CDA compliance is always with the issuer
- ▶ Identify key internal staff person to work with Disclosure Consultant
 - ▶ Know the Difference Dissemination Agent vs. Disclosure Consultant
 - ▶ Dissemination Agent - Posts Disclosure Filings, Usually Named in CDA
 - ▶ Disclosure Consultant - Reviews CDA(s), Assists in Filings AND Posts Filings
 - ▶ Both services are needed for “complete outsourcing (may be the same entity)
- ▶ Provide information to Disclosure Consultant on time
- ▶ Go to <https://emma.msrb.org> to verify filing was posted

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