

# SESSION ONE

## The Evolving Landscape of Municipal Disclosure

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# When Did We Learn What Good Disclosure Looks Like?

# Pension Disclosure

- What happened?
- What gave rise to the disclosure failure?
- What lessons did the SEC hope we would learn?
- What did the market learn?
- What did the SEC learn?

# Disclosure Policies and Procedures

- What happened?
- What made it so that the SEC was so driven that issuers would adopt policies and procedures?
- How did the market react?
- What did the SEC learn from this?

# Continuing Disclosure

- What happened?
- What efforts did the SEC take to seek to fix the problem?
- How did the market react?
- Where did we get it so wrong?

# Bank Loans

- What happened?
- What efforts did investors and the SEC take to fix the problem?
- How did the market react?
- What took our market so long?

# COVID Disclosure

- What happened?
- What efforts did the SEC take to help us?
- Where were we confused?
- What did we learn from it?

# What Has This Trajectory Taught Us?

- Investors are supposed to react to issuers – not issuers to investors.
- Whenever we turn bonds into a transaction as opposed to a relationship with investors, we are missing the point.
- Things change – and disclosure needs to change with it.
- It's critical to have a clear sense of what the law actually requires and why it requires it.



# What It Looks Like to Be An Organization That is Learning Disclosure

# A Learning Organization

- Do we know what we are supposed to know?
  - High-level legal “knowing”
    - Law but also what is the SEC doing and saying
  - What is going on in the market?
    - What are the hurdles that other issuers who are similarly situated struggling with, doing about their practices, and managing areas of concern
- ***Cautionary tale***

# A Learning Organization (cont.)

- How do we know that we have the right members of the team?
  - Internal team
    - Do we have the right “ownership” team who will own the process for disclosure?
    - Do we bring together the right parts of the organization to make sure we are telling the story?
    - When was the last time it changed? (frequently if the team doesn’t change it means key areas are left out)
  - External team
    - Does our external team bring together enough legal know-how, market knowledge and other expertise to complement the internal team?
  - ***Cautionary Tale***

# A Learning Organization (cont.)

## ❖ Do we know how to tell the credit story?

- Finances and operations
  - Are we evaluating our finances and operations freshly to ensure that we know the story as that might have changed?
  - What does internal due diligence look like?
  - Think: pension disclosure escaped disclosure, could something else do that?
- Bond Terms and Security and Source of Payment
  - Do we as the issuer think we are telling the right story about the bond terms and security and source of payment?
  - Think: bank loans escaped disclosure, could something else do the same?

# A Learning Organization (cont.)

- ❖ Do we know how to tell the credit story? (Continued)
  - ❖ Perspective of an investor
    - ❖ Do we understand how an investor will look at the credit story?
    - ❖ Do we understand how that may be different than other financial stakeholders?
    - ❖ Do we have appropriate sensitivity for secondary market investors as well as primary offering investors?

# How Does an Issuer Assemble Its Internal and External Disclosure Team?

# Assembling the Right Team

## ❖ Internal disclosure team

- Do we have the big picture people?
  - Much of the credit story disclosure failures came down to not having senior management in the room empowered to frame the story of the credit.
  - Who are the right people within the organization who can frame the big picture of the credit in way that enables the disclosure working group to be confident that they are not missing an “elephant in the room” just because they are not in a place to see that big picture?
  - ***Important consideration: Big picture people are not just important for facts they may know about the credit, but their perspective and vision for the credit.***

# Assembling the Right Team (cont.)

- Internal disclosure team
  - Do we have the little picture people?
    - Much of the continuing disclosure failures was the lack of little picture people.
    - There needs to be a solid group of people who are focused on:
      - Are the right people reviewing the disclosure?
      - Are the policies and procedures being followed?
      - Are we paying attention to whether others in the organization should be involved?
  - ***Important consideration: The SEC has said that the single most important element to disclosure is to know who is responsible for what. This is often times a little picture exercise, not a big picture one.***



# Assembling the Right Team (cont.)

## ❖ Internal disclosure team

- Do we have the right subject matter experts?
  - Pension disclosure in particular became problematic in large part due to the un-involvement or uninformed involvement of the pension system.
  - Whenever a topic is discussed in the disclosure, someone who is an expert is that information needs to speak for that for the issuer.
  - But this is also about looking for the right people to cover areas that are not discussed.
  - Efficiency of the process though needs to be considered – it is important not to have so many people involved that the disclosure process becomes extremely difficult to manage.

# Assembling the Right Team (cont.)

- How internal disclosure teams have changed over time:
  - After pension disclosure, involved pension systems.
  - After New Jersey and related actions, creation of disclosure practices working group.
  - After MCDC, creation or further empowerment of a disclosure coordinator.
  - After COVID, increased reliance on experts on revenues.
  - After climate change concerns, capital projects and sustainability experts.
  - After cybersecurity concerns, IT security experts.
  - Going forward, increased budget experts?
  - ***It's helpful to have an annual procedure to work with your external disclosure team to consider whether other parts of the organization should be included in some fashion into the internal disclosure team.***

# Assembling the Right Team (cont.)

- External disclosure team (referring to all of the working group – bankers, municipal advisors and attorneys)
  - Does your external disclosure team help to understand what you need to know?
  - Does your external disclosure team have a sense of issues that are arising outside of your organization?
  - Does your external disclosure team have a sense of the trends that should be focused on?

# What is the Point?

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## ❖ Disclosure is always evolving

- Finances and operations change over time and so do the key facts investors need to know.
- The SEC changes its focus and priorities over time.
- Sometimes the law actually changes.

## ❖ Being a learning organization comes down to evolving with those trends

- Staying current on the legal and industry trends
- Changing practices, evaluating team members, evaluating ongoing disclosure to fit where things are today regardless of what disclosure looked like before.

# QUESTIONS?

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