California Debt and Investment Advisory Commission

Webinar Transcript
Municipal Debt Issuance Fundamentals Mini-Series
Session 2: You Sold Your Bonds, Now What?
September 16, 2020

Up to the date of the sale, the issuer had an army of consultants and external support to facilitate the process. After the sale, the issuer finds themselves at the helm and responsible for managing everything they agreed to in their Official Statement and legal documents. This session will focus on what occurs from the time of sale to closing, and issuer responsibility the day after the closing through the time when the bond is repaid or refunded. Participants will gain an understanding of setting up and managing post-issuance debt administration such as tracking of expenditures, maintaining tax compliance and investor relations, and managing internal controls.

[Editor's Note: This transcript has been prepared by the California Debt and Investment Advisory Commission (CDIAC) and it believes it to be a fair and accurate reproduction of the comments of the speakers. Any errors are those of CDIAC and not the speakers.]

Title Slide – Municipal Debt Issuance Fundamentals, Session 2: You Sold Your Bonds, Now What?

ROBERT BERRY: Good morning, everyone, and thank you for joining us this morning for *Municipal Debt Issuance Fundamentals: You Sold Your Bonds, Now What?* This is the second webinar in our two-part series, presented by the California Debt and Investment Advisory Commission.

My name is Robert Berry, and I'm the executive director here at CDIAC. And our panel is ready to jump into the next session to cover the post-issuance phases of the debt issuance process. But before they do, please allow me just to repeat a few of the housekeeping items from last week. May save you some questions, especially if you are not able to attend last week.

Slide 2 – Housekeeping 00:49

ROBERT BERRY: Alright, so a number of questions about the slides. The slide presentations are in the "handouts" section, in your control panel. Also, there is a glossary of terms there, several people have asked about the meanings of certain words and phrases, all of those can be found in the glossary.

As far as questions go, please submit your questions in the box, marked "questions" near the bottom of your control panel, you can submit your questions at any time during the presentation. I'll try to pose them to our panelists, as time allows during our Q&A session.

We went over last time by about 15 minutes to get into a few questions, but there were far, far too many questions, and then we received some additional questions in the registration for session two. So, our panelists will try to get to a few more questions during our Q&A session today, but I'm sure we'll not get to all of them. But don't let that deter you from asking questions, CDIAC will follow up with any unanswered questions after the program - answers, references to additional helpful information.

Access to live captioning is available during the program at the address on the screen. Also, there was a link in the chat box that you can access.

Lot of questions around certificates of participation and CPE. We will send out certificates of participation within a couple of weeks. As far as CPE goes, I recommend that you submit that certificate of participation to your professional organization, and ask if these webinar programs qualify for CPE.

If you would like MCLE credits, send us a request by e-mail at the address on the screen and provide your bar number.

Replay. We will send registrants a link to a replay and a transcript in about 10 to 14 days. Lots of questions about replays. The webcast will be available on our website later for review for any of you are not able to participate last week or this morning to go back and review later. In fact, every webinar that CDIAC has ever produced is on our website for your review and available for replay.

Lastly, as far as technical issues go, if you can hear my voice: try the technical assistance line at GoToWebinar at (877) 582-7011, or try the link on the screen. We had a few technical problems that came in from folks that are participating - frequently, audio issues, or just connection quality. If you're having those kinds of problems, especially connection quality, I would advise you to log out and try logging back in again to get a new connection. If you have an audio issue, we always recommend, if you're listening through your computer, maybe switching over from your computer to your phone line, by dialing in, may solve that for you.

Let’s see.

Slide 3 – CDIAC Resources 4:16

ROBERT BERRY: There we go. As I mentioned last week and this is a two-part webinar that just scratches the surface of the material that is covered in CDIAC’s *Municipal Debt Essentials*, our flagship debt issuance educational program. So, that program, our *Municipal Debt Essentials* program, is a three day, 20 hour, fundamental program that involves a few dozen experts, detailed presentations, case studies, hands-on exercises, and we're hopeful to return to in-person programming like that program next year, but in the meantime, CDIAC has some great resources that will supplement the material that will be presented today and yesterday. The most important is, of course, our *California Debt Financing Guide*. The guide was completely rebuilt in 2019 and goes into great depth on all the topics discussed today. And as I mentioned last week, we have provided embedded links to the sections of the *Debt Financing Guide* that relate to the topics that are being discussed today, and other links to resources, for instance, GFOA guidance as well.

CDIAC’s Investment Primer is a little bit dated, but still very valuable. And our *Local Agency Investment Guidelines* updated annually are also great supplemental resources. All the links provided on this slide and throughout the presentation are live and also live in the PDF handout in the control panel.

So, if we can advance the slide here.

Slide 4 – Speakers 5:57

ROBERT BERRY: All right. So back for their command performance, and to finish our tour of debt issuance fundamentals, are Jacqui Jennings, Steve Heaney, and Jay Goldstone.

To reacquaint you with our team here, Jacqui is a partner in the San Francisco Office of Schiff Harden, LLP, has more than 25 years of experience serving as bond counsel, disclosure counsel, underwriters' counsel, and issuer's counsel, and a vast array of municipal financing structures for a variety of agency types. Jacqui has been a member of CDIAC's faculty and a trusted advisor to CDIAC for many years.

Steve Haney retired from Stifel just over a year ago, but he graciously allowed us to pull him back in for this program. While at Stifel, Steve served as head of the municipal securities group -- excuse me. Among other key leadership roles over his career as an investment banker, Steve had lead responsibility for several billion dollars of municipal bond issues and was a pioneer in many financing techniques.

Steve also served on the Municipal Securities Rulemaking Board for four years, and as vice chair in 2012. Also important to note, Steve was a chief contributor to the development of our *California Debt Financing Guide*.

And Jay Goldstone is back to share his expertise with us. Jay was most recently a managing director in the Public Finance Group of MUFG Union Bank. But, before that, Jay served the City of San Diego as its chief operating officer, and the city's first chief financial officer, where he worked to restore the City to financial health.

As with Jacqui and Steve, CDIAC has been lucky to have Jay as a trusted member of our faculty, and as one of our commissioners for several years. And like Steve, Jay was a member of the Municipal Securities Rulemaking Board serving as the chairperson.

But, before I turn this over to Jay, let's look back at the last episode by reviewing our wheel of debt issuance, as I call it.

Slide 5 – Webinar Overview 7:56

ROBERT BERRY: We began with the integration of project and financial objectives, the importance of your debt policy in guiding your financing decisions, and your role as a finance officer. Then in the next session, the previous issuance session, we spent considerable time with the pre-issuance process, including selecting the financing team and the documentation used to formalize your debt structure. And, lastly, we briefly covered what happens on the date of sale. This morning, Jacqui, Steve and Jay, will cover the periodic and continuous administrative requirements of your debt issue. And then, the end of life for your, for your debt that is, we'll touch on refunding and redemption. But before we move forward to new material, our presenting team would like to take a couple of steps back and review a few key points from last week.

So, I'll turn it over to Jay. Jay?

Slide 6 – Who is in Charge of Debt Issuance 8:54

JAY GOLDSTONE: Thank you, Robert. As Robert mentioned, we covered a lot of material last time and some of that was probably covered very, very briefly. And so we want to recap a little bit. As Robert mentioned, we did talk about the debt policy; spent a lot of time on your responsibilities to make sure you have a good, updated debt policy.

We talked about the issuer's responsibility, and then your financing team, and what they do, and the legal documents. But given one of the questions that we had asked, and the response, we thought it would be important to go back and talk about the issuer’s responsibilities, and I'm only going to spend maybe 5 or 10 minutes on this, but I think it's very, very important that everybody understands what it means to be an issuer of debt. When it says “Who's in charge of the debt issuance?” and it says “You are as the issuer.” You look at the similarities between the issuance of debt and the issuer. It really, really stresses that.

When I talk about “you,” think of it as synonymous with many meanings. It could be “you” as the individual, the finance director, the debt manager, the accountant whomever you might be - the treasurer. It could also mean “you” as a department, or “you” as an organization. So “you” in this context, whenever you see “you” or “your,” it's more global. It's “you” as the legal entity, is really what it means, you may have specific assignments within your organization, but it's what your organization's responsibilities are as the issuer. It's your government's transaction.

We talked about the debt policy, it should serve as the parameters for the debt and the structure. We mentioned, and we really tried to stress that when the deal is done, we're going to talk more about what happens, post-sale. But when the deal is done know, it's your obligation for the next 20 to 30 years or until there's a refunding. But then you've got new bonds out there, but until those bonds are retired, you have an ongoing, legal and operational obligation that you have to live with.

If anything goes wrong, it's the regulators that are going to come knocking on your door. Yes, they may come knocking on your underwriter’s door if it's something they've done or at least maybe to ask them questions. But you do have an ongoing legal regulatory obligation, even though you as a public agency, aren’t technically regulated by the Federal government on your bond issues. Indirectly, you do, and you have an obligation to those regulators, and you have an obligation to your investors.

And the last bullet on this page, strikes a point home that you have a potential personal liability and reputational risk if something goes wrong. We'll talk a little bit more about that in the next couple of slides.

Slide 7 – Key Areas of Responsibilities 12:05

JAY GOLDSTONE: Again, to reemphasize, as the issuer, what the key responsibilities are.

Again, I go back to your debt policy, not going to spend any more time on it, that we did last time, you can go back to those slides. I think there's a lot of details in there, and there's a lot of other publications, either through CDIAC, GFOA, or CSMFO that can provide you with samples of debt policies if you don't already have one.

But it's -- you're the one that developed it, and you're the one that approved it, and again, "you" being globally to your organization. Globally to your organization you have the sole responsibility and I say "sole responsibility" meaning, you may tap the resources of your expert, external team, but you have the responsibility to decide if and when to issue debt.

Make everybody in your organization understand what their responsibilities are. It's not just the finance department's responsibilities, it could be the public works, it could be the water. Clearly, it's a city council or governing board.

They have an obligation when you take bonds out to the market and they need to understand that. It's your responsibility to select your financing team and determine the structure. And even in determining the structure, you're going to get input from your financing team and what might get you the best market attraction and lowest interest rates. But you're ultimately making that call.

Key here, and I probably should have highlighted it, is *provide accurate information*.

When you release your preliminary offering statement, the POS, it's filled with information. Some of it's perhaps a little bit boilerplate, lot of legalese. But a lot of it is specific to your organization into your specific transaction. It might talk about the project, but it's going to talk about demographics, is going to talk about financial information and your organization. You're presenting that and there was some discussion last week, whether or not this is a disclosure document, or a sales document, and it's probably a combination of both, but if you treat it as a sales document, you're trying to get people interested in buying your bonds, but you're also trying to make sure, that they have a comfort level that you have the wherewithal to repay it. You're going to be putting information into your POS. You need to make sure that it is accurate and as current as possible.

I can't stress this enough to *read* the documents. You may not read every iteration of every word. There are going to be certain sections that are going to be more pertinent, but you need to read the documents. Know what's in them, know what you are committing to as an issuer, because again, for the next 20 or 30 years, you're going to be living with it.

When the deal is done, make sure you're going to comply with all the laws and regulations to make sure your payments are timely and that you comply with your continuing disclosure obligations, and again, we'll talk a little bit more about that.

Slide 8 – How Do I Keep Out of Trouble? 15:12

JAY GOLDSTONE: So, how do you keep out of trouble? You know, we've talked about how you could get into trouble then and the regulators could be knocking on your door. Well, here's some very simple steps. So, the next couple of slides will talk about how you might be able to keep out of trouble, be an active participant and attend every meeting. Don't just turn this over to the hired professional team and let the lawyers, and the underwriters, and maybe your financial advisor/municipal advisor, run the show and just fill you in periodically. You should be on all calls and all meetings. You or somebody from the City or organization should be very much involved, because you're ultimately going to make certain decisions. Again, read all the documents. Don't be afraid to ask questions, especially if you're not out in the market that often. There may be a lot of nuances that you just don't know. You need to ask the questions. You need to understand what it is you're committing to, because at the end of the day, you need to be prepared to present the deal to your governing board.

I mentioned this last week that if you can't explain the deal to your governing board, and I don't mean every little nuance, but in a general enough sense, that gives them a comfort level and gives you a comfort level that you know what you're getting yourself into, you should not be doing the deal.

Which is the last point there, if you don't understand the transaction, don't do it. Don't feel pressured into it and this is even some general, I mean, you may be doing more vanilla, what we call vanilla bond deal. But there are things like derivatives and interest rate swaps and so forth. And other little products that are out there that makes a deal more complex. It doesn't mean it's bad, it just means you need to understand what it is you're getting yourself into.

Make sure that your internal team understands their responsibilities. They can't take this lightly just like you can't take it lightly.

Slide 9 – Do you have more tips on how I can stay out of trouble? 17:19

JAY GOLDSTONE: So, finally, as the recap of you as the issuer with the sole and primary responsibility of the deal, at a minimum, you should provide bi-annual staff training and training to your governing board.

You probably bring in, perhaps, your disclosure counsel or bond counsel to come in, talk about some of the changes in the laws. You'll have a turnover of your governing board from time to time. They need to understand what their roles and responsibilities are, and their potential legal exposure. And you have staff turnover and training plus, again, if you're not a frequent issue, out there, it's good as a refresher.

It might be a one-hour or two-hour training. It doesn't have to be all day, but you should do the training. Have staff sign asked attestations or certifications related to the information they provide. What does this mean? One of the things that I learned through my career was, use that as an example - I'm doing a water revenue bond. I'll tap people in the water department to provide me with information. It might be their top 10 customers, and might be volume information, and so forth.

They're busy with other deals, and they're not the ones involved in the bond transaction. And they may view this as just an extra burden, and they'll just provide you with something. And I'm not saying they're going to try to lie to you, but it might be last year's data. They didn't have the time to update it. The time you're ready to sign off on your POS before it's going to hit the public. I would typically have a final meeting with the group, the internal group, who provided information, and it could be a group meeting around a table. It could be a conference call, individually, one-on-one, and I would reference those pages that they provided information into. And I would say, "Okay. Are you sure that this is accurate information and up to date?"

Then, of course, they would typically say, "Yes", then I'd say, "Okay, fine. The form I sent you? Sign that form." And basically, all the form is saying is something as simple as "To the best of my knowledge, the information I provided is a fair and accurate representation of the facts."

It just makes them think a little bit more, if it gives them any hesitation to sign that, then maybe there's something wrong in the data. It's nothing tricky or anything you're not trying to "Gotcha!" But it's just to make sure everyone understands what they need to do.

Develop a tickler system, I'll talk more about that, in the later part of the presentation, about when and how to develop a tickler system or what should go into it. And be prepared for staff turnover. If this is a 20 to 30 year bond deal, chances are the people who maybe were involved are managing the debt in the early stages, may not be the staff that's there mid-bond life or at the end of the bond life.

And you need to be prepared for that, to have proper documentation, files, folders, binders, whatever it might be, as you move forward so that you're prepared for new staff to basically not miss a beat.

And finally, and this is something that was very, very relevant in San Diego and in other public agencies that end up dealing with the regulators. Intent does not matter to the regulators. You know, that the defense is saying, "But I didn't intend to do it," doesn't really matter. It's the action or lack thereof that does.

So, the regulator, they're going to look at what you actually did or did not do, whether you meant to do it that way, or not, which is really why it's so important for you to pay close attention to everything going on there for all intents and purposes.

We mentioned this last week, the financing team that you hire, those professionals are long gone by the time a regulator knocks on your door. And there could be a whole host of things that go wrong if you're not paying close attention to, and it may not be based on the structure or the actual bond deal. It may be on the continuing disclosure and other matters that are your responsibilities. So, just make sure that you understand that it is the actions, or lack thereof that matter to the regulators and they don't really care about whether you intended to do it or not.

With that, I will ask Jacqui to cover the next couple of slides.

Slide 10 – I Sold My Bonds, Now When Do I Get My Money? 22:06

JAY GOLDSTONE: You have to turn your mic on, Jacqui.

JACQUI JENNINGS: Okay, can you hear me now?

JAY GOLDSTONE: Yeah.

JACQUI JENNINGS: For those of you who are here with us last week, this slide will be a bit familiar.

This is our "follow the money" slide to show you graphically how you get from the bond issuance, but more importantly, how do you get your money for your projects. And one of the slides that we missed last week due to technical problems, was talking about the bond purchase contract. So, we're going to incorporate that 'review' into this discussion. If you look at this chart on the very top right-hand side, there is a line that's going from the trustee to the issuer, and it says bond proceeds. And parenthetically, it says approximately two weeks after the bond sale.

Next slide.

Slide 11 – Bond Purchase Agreement/Bond Purchase Contract 23:16

JACQUI JENNINGS: Jay? Advance to the next slide?

JAY GOLDSTONE: I did. Slide 11 is showing.

JACQUI JENNINGS: Oh there it is, it's just now showing up. So, here's what happens when you enter into the bond purchase contract. That is an agreement between the issuer and the underwriter. And may also include the borrower or another obligated party.

What this document does is, it is the agreement from the issuer to sell the bonds to the underwriter, this is the primary offering.

This document contains a whole host of information. Most importantly, it details the price for which the underwriter will pay for your bonds. It also tells you the representations and warranties of the issuer and any obligated party or borrower.

It has a list of underwriter's outs, that is a term that is used that gives the underwriter, the right, to [withdraw from the agreement in the event of specific things occurring]. Most of them have to do with national events, things like a shutdown of securities trading, escalation of war, things like that. So there may be, and you're starting to see, additional underwriter's outs that may say something to the effect of, that are addressing additional national outbreaks of pandemics. Because that is injecting uncertainty into the marketplace.

This bond purchase contract also has and contains all the closing conditions. A list of the types of the closing documents. The various opinions that will be issued by the attorneys for the parties. There may be forms, actual forms of those opinions attached as appendices to the Bond Purchase Contract. There will be a form of an issue price certificate, and various other representations and warranties made by the underwriter to the issuer.

It is really important for us, as Jay said, for you to read this document. A lot of times, there are two documents that tend to get, I don't want to say short shrift, but not as much attention by the issuer as they should.

A lot of times, it will be the bond purchase contract, and the continuing disclosure undertaking and we're going to talk about that in a little bit, but it is really important that you look at and review the bond purchase agreement. In particular, the sections that talk about your reps and warranties.

You need to make sure that whatever these representations and warranties are, of the issuer, that you can actually make them. And that they are true as of the day that you're going to sign the purchase contract. And you will also be asked to make a representation that those reps and warranties are also true, as of the date of the closing for the bonds.

This purchase contract will also have a list of all the various documents, well, most of the various documents to be delivered at closing. One of the questions that we did receive was, how do you know what documents you need to have? Your bond purchase contract is a good roadmap for that. It will have a list of all of the documents from the trust agreement to the preliminary and final official statements, it will contain a list of all the various documents and certifications from each party that are going to be required. It also details who's responsible for the payment of which fees. There are, certain fees that are going to be paid for by the underwriter. There are certain fees and costs that are going to be paid for by the issuer. It specifies that. This document also tells you “what is the price for these bonds?”. It's very specific as to here's the final principal amount of the bonds, what the underwriter discount is, that being the amount of money that’s being paid for their services and marketing [of the bonds]. This document is just is, I can't stress enough how important it is for you to actually go through all of the requirements in this document, particularly those that pertain to you. This document will be executed on a day certain, then it also contains, “when is your closing date?”.

It tells you that on X date, which may be anywhere from one week to two weeks after this document is executed, that on not eight o'clock in the morning, we're all going to get together, the money's going to change hands, and if you go back to the prior slide, you don't have to do it, Jay, but in the prior slide, what will happen is, in the center of that slide, the issuer sells the bonds to the underwriter and on the day of closing the underwriter will wire the bond proceeds to the trustee.

And then, at closing, this is all happening pretty much more or less simultaneously, once the trustee verifies that they have the funds in hand, then you can have what is called the “closing call.” The closing call is ministerial, but it is an important part of the process. The parties that will be on that closing call will be the trustee, you as the issuer, the underwriter, DTC, and generally all the rest of the working group is invited. But the important thing that happens there is, once it’s verified that all the conditions precedent to closing have been satisfied, and the trustee has the money. The trustee is then authorized to release -- authorizes DTC to release the bonds to the underwriter, and the trustee then releases the funds to the issuer.

And that's how you get your money.

Slide 12 – Ongoing Administration 30:24

JACQUI JENNINGS: Jay, back to you.

JAY GOLDSTONE: Thank you.

So, now, you've got your money. What we want to talk about, you know, is sort of after the bond sale. What the next steps, what you as the issuer should be aware of and need to do. We are breaking this down in the next section, into sort of the cyclical tasks and then the continuing tasks, which you can see summarized in the box.

Slide 13 – The Issuer's Perspective 30:56

JAY GOLDSTONE: So, from the issuer's perspective, you know, "I sold my bonds, now what do I do?"

As Jacqui mentioned, you've got your money and you may not physically have your money, it may be held by the trustee and maybe transferred to you, and you're handling it. Two different options and approaches and the different responsibilities that come with that. What do you do now?

What I always found when I was involved directly in doing bond sales, the fun part of the deal was structuring the deal, getting it all together, meeting with the team, possibly go to New York occasionally, sometimes not, meeting with the rating agencies, doing all those things and getting the deal done. Very exciting. A little adrenaline rush to whatever you might want to consider. And then the deal is done.

The reality is that the real work from the issuer's perspective really is beginning at this point in time. So now what do I do?

Slide 14 – Establish a Tickler System for Key Dates 31:58

JAY GOLDSTONE: It's important, again, to make sure that you and your staff understand their obligations. It shouldn't be the first time they're learning about it. There may be people within your organization that now have a responsibility for managing this debt that weren't necessarily involved in the structuring and the issuance of the debt.

It's probably not great advice or a great suggestion to not involve key people throughout the process. Some people may only be involved in one or two meetings and not the whole thing. You might want to just have them review some documents.

One of the things that I learned on some of the deals, depending on how it's structured, is, how do you account for it? How are you going to book to send your financial statements? In your general ledger and so forth? You may need to talk to your auditors and get some input from them to make sure that the way you're booking it initially is the proper way of doing it. So, you don't maybe have some post-closing adjustments when the auditors come in and start digging.

You might want to make sure that the accounting group within the finance department understands what you're structuring and proposing. Again, if it's a fairly straightforward vanilla type deal, not a big issue, but if you've got some bells and whistles in there, you might have to book things differently, you know, a reserve fund, capital expenditure fund, and so forth. Know what's in that tax certificate and continuing disclosure agreement.

And can't stress this enough, but establish a tickler system for key dates. One of the things that I've come up with over time is - it’s probably best to create this tickler system at the time of either right before or right after closing. Maybe even during the bond deal itself, because things come to mind. They say, “Okay, I've got my debt service payment dates. What are those dates?”

If you have multiple bond deals, you may not want the exact same two dates each year, one date, with interest solely, one date with interest and principal on every bond deal, because you may have cash flow issues. So, you might have different bond dates. Bond payment dates on different transactions. Mark those down - your continuing disclosure filings. When are those due? Are they due 90 days after the end of the fiscal year? Typically more. Typically it's 180 days. Is it 220 days? Whatever it is and then what kinds of information is required.

Everyone's going to be required to file their annual audited financial statements, but what other information is required? Put that in your tickler system. When's that information typically available? Maybe you get it earlier if it's based on June 30th information and so your water utility and they've got customer data, you can get that to you in July, even though you maybe don't have 180 days until you have to disclose it. Start gathering that information, putting it aside.

Arbitrage rebate obligations, in today's market environment, the chance that you have an arbitrage on your deal, and arbitrage, for those who aren't familiar is, is you have what they call is a “true interest cost,” which is the cost of your borrowing, quality and cost of your borrowing, against taking the proceeds and investing them. And if you can earn more on the investments then the cost of issuance, that's called “positive arbitrage” and that money has to be rebated to the Federal government every five years. You’ve got to track that, put that in there and typically you might have a third party doing the calculations and so forth.

Your spending timelines. We mentioned last week that when you are ready to close the bond deal, and you're signing the tax certificate, one of the things you're indicating is that you have a reasonable expectation that you will spend the proceeds within three years. If you don't have that reasonable expectation then you shouldn’t sign it, you might need to restructure your deal. We talked a little bit about that in the Q&A last week, but you're spending timelines, you've got three years to spend it. If you don't spend all the proceeds within the three years, but you've made good progress, you don't get penalized per se, but now you've got to do, restrict how you invest the unspent proceeds.

All those timelines in there, your yield restrictions, and then the use of the proceeds, making sure, you're tracking, all of that. So, these tickler systems here are some of the areas. There may be other things to put in there. The best time to create this tickler system, is at the time you're ready to close the bond deal and everything's fresh in your mind. If you've hired a municipal advisor or even with your underwriter, your bond counsel or disclosure counsel have them help you. Make sure you -- you should take the first cut at it, see if you're missing something. That's a key date that you need to keep in mind, and have them help you with that.

Again, it's better to do it at the time of the sale, then a year later when you're maybe in your first cycle, and the first time of your disclosure, and now you're scurrying around, trying to pull everything together.

Slide 15 – Internal Tracking 37:31

JAY GOLDSTONE: Your internal tracking. Again, you've got to manage your expenditures. You setting your bond documents, and here's how you're going to spend the bond proceeds, you've got to make sure that that's how you're spending the bond proceeds. You might have some flexibility. I've seen it, where you have some flexibility in your authorizing resolution that allows you to shift from one project to another. You thought you were going to finance these three projects and by the time you're ready to go with project three, there's no longer a need for that project, but you've got unspent bond proceeds.

What do you do? Do you just refund, just pay off those portions and not spend those portions of the bonds? Or do you spend them on a different project?

If your documents are flexible enough, you can go back to your governing board, make an amendment to the documents. It's usually authorized; you don't have to go back to the investors and so forth.

But what you don't want to do is spend the proceeds for unauthorized uses. It could have tax consequences. The worst thing that could happen is you issue tax-exempt bonds, and then you're using some of the proceeds for private use, instead of public use, which means that a private sector entity, organization, company, gets the benefit of the tax-exempt bonds and if it's more than 5%, bonds could become taxable. The worst thing that could happen from a reputational standpoint and everything else, is that an investor buys your bonds thinking that they're going to be earning a tax-exempt interest on it. Thus, you're paying a tax-exempt interest rate and all of a sudden, the IRS comes in and says, "You violated the covenants and these bonds are now going to be taxable."

Doesn't happen that often, but it does happen. So, you just want to make sure you're tracking the use of the proceeds, and that therefore authorize use.

From an expenditure standpoint, probably you're going to set up separate funds. You might set up a separate bond fund to track the ins and outs of the proceeds. But you're also going to probably set up separate accounting funds. It might be a capital expenditure fund, so maybe one fund for a number of capital projects. But then, you break it down by account numbers and/or individual project numbers. So that, again, if you're ever audited, you can go back to your financial records and produce the transactions, and then, of course, you'll have the backup materials on file.

And again, determine the appropriate booking of the transaction in your general ledger.

Don't be afraid to ask your auditors, especially if you haven't done this often. You don't have a lot of precedents to show within your organization. Ask your auditor how best to book the transaction once it's done.

For an internal control, go back to your tickler system. The more detailed that tickler is -- and there should be a tickler for each bond deal there may be commonalities in it, some of the dates may be the same -- but for each bond transaction you have out there, you should have an individual tickler system. And identify the responsible staff that you have for the different components within that tickler system, for reporting, for accounting, for whatever it might be as it relates to that bond deal. It might be, if you're a very small organization, it may only be one or two people.

In a perfect world on internal controls, you have the segregation of duties. Well, many, many organizations don't have the luxury of multiple staff, and so you're going to have to determine how best to separate responsibilities.

And I can't stress enough, *don't miss key dates and deadlines*. The SEC will come in periodically, and if you're going to miss a deadline, it's what's called a material event notice. You just need to disclose it. I believe we'll talk about that in another slide in terms of your disclosures, but just stay on top of it. And once you get into a routine, even though it might be annual or semi-annual, it should become more routine.

The previous State Treasurer John Chiang established this Taskforce on Bond Accountability. That group prepared a very lengthy report. And in the report, at the end of the report, there's a couple of appendices and one of them is a checklist. I would highly recommend, I believe, the fact that this is highlighted and underlined means that there's a link to it. So, if you have the PowerPoint slides, otherwise go to the Treasurer’s website. That would be a good starting point of a checklist that won't necessarily be mirroring your tickler system totally. But pick and choose those things that are most applicable to your organization and to your particular structure.

Slide 16 – Investment of Bond Proceeds 42:38

JAY GOLDSTONE: We've talked a little bit, and I'm not going to get it to great, great details on the investments of the bond proceeds, but as Jacqui mentioned, roughly two weeks after the bond sale, you close on the bond deal, and the funds you'll have -- 10 million, 50 million, $100 million worth of bond proceeds that you haven't spent yet.

Some of the proceeds might go for the costs of issuance, but you're going to have probably 95% of the proceeds remaining that you'll be spending over time on your capital project or projects.

So, what do you do with the funds? I'm sure everybody, because under California's State Law, you need an investment policy. And there are government codes that dictate what you can and cannot invest general city funds in. What we call your discretionary dollars, your pooled dollars, your investment portfolio. There are different restrictions on what you can and cannot do with those proceeds; the length of time, the percentage that you can invest in, particular kinds of investments, and so forth. Some of those rules do not apply to bond proceeds, you have some different flexibilities.

Also, think about, for an example under the government code, without special approval, but from your city council, you cannot invest your general portfolio longer than five year duration; can't have a maturity longer than five years. Well, if you have a reserve fund on your bonds, you're going to probably want a 30 year or 20 year investment of that, of the reserve fund, or some longer duration than five years without having to go back to your city council.

Those are the kinds of things that you're going to be building into your bond documents when you're structuring your bond deal, and your investment of bond proceed options will be one of the things that will be described. Investors will want to know that also -are you taking all the proceeds and tying them up for a longer period of time? Or not? And so forth. So, just pay attention to that. Understand whatever restrictions you might have. You don't have carte blanche flexibility, but you have greater flexibility then you would under the normal government code.

Again, actively monitor construction activity. Maybe every six months, every year, especially when you're getting into the last year of your three-year cycle, talk to your public works department, talk to whichever department has responsibility for that project. If it's one of your enterprise funds, your water, wastewater, electric, if you have an electric utility, talk to those people, those project managers to find out what's going on. If there are delays, find out why.

If it's a procurement issue, then maybe you need to interject your authority into the procurement process to get some contracts going. Whatever it might be, just monitor it, because again, at the end of the three years if you haven't spent all the proceeds other restrictions and activities come into play.

Mentioned, develop the procedures for the re-investment of the bond proceeds. You know, one other thing in terms of one of the steps that I didn't put it on here. Typically, what you're going to end up also doing is have the project manager over the project, or over the projects, if it's more than one project or more than one person, put some cash flows together for you. So you have a good understanding of when cash is, at least theoretically, expected to be needed.

The cash flows could be, “Okay, I still have to do the design phase and that's going to take me six months, and it's going to be, $100,000, out of a $10 million project.” Okay, so you know for the first six months, you might only spend up to $100,000. Then the project might be, you know, they break ground and so forth. They might have CEQA requirements they still have to go through. Depends what stage the project is at, at the time you're doing the bond sale.

Having a cash flow will help you when you're trying to determine how best to invest those bond proceeds and the duration of the bond proceeds. One of the things we did not mention, there's a document, and it's getting maybe a little in the details, but it's something to keep in mind. It's called a “resolution of intention.”

At the time you think you're going to start a project, and you think you're going to issue bonds. You would take this document, and, again, there's other training sessions that will get into greater detail, but you may take this resolution of intention to your city council, and essentially, in so many words, speaking from a layperson's perspective, it says, “Should the city or the governing body decide at some point in time to issue bonds for these projects, we can reimburse ourselves for any cash we've outlaid in advance of the actual issuance of bonds.” Without that resolution of intention, any cash you've put into a project, that you're now going to finance with bonds, are just cash that you've spent and you can't reimburse yourself. So that's the other thing to keep in mind.

Again, as you're doing your cash flows, when the timing of issuing the bonds, the timing of when going to draw down the bonds, and know who you can work with on the investment of the proceeds. You may make that determination. You may direct your trustees if your trustee is holding the proceeds, how to invest the money and the duration of investing the money.

You might acquire and again, this gets into more details that we're going to cover, but it's called a guaranteed investment contract. Where you're investing typically on your reserve fund. It's a longer-term investment that guarantees you a certain rate and gives you some levels of flexibility on being able to perhaps drawdown funds before the final maturity without a penalty. Depending on the kind of flexibility you want to build into that kind of a document, will determine what kind of an interest rate the other party may be willing to pay you.

Here are some reference materials: CDIAC, the *Debt Guide* that Robert mentioned, here's a section that's been identified. And GFOA best practice on *Investment and Management on Bond Proceeds,* are two great resources for you to go to.

Slide 17 – Other Ongoing Obligations 49:17

JAY GOLDSTONE: So your other ongoing obligations. The rating agencies, you know we talked about the different parties involved in the bond deals. So okay, you sold the bonds, but the rating agencies aren't done, they're going to do ongoing surveillance. They are going to ask you questions, especially if you do not have a credit enhancement on your bond deal. If your bonds are solely based on your organization's credit rating, the rating agencies are going to want to do a surveillance and update, and the investors are going to want that information just to make sure that you're still being financially responsible and solvent to make those bond payments. So, you'll be getting phone calls periodically, probably have in-person meetings with the rating agencies, maybe annually, maybe every other year in terms of face-to-face meetings. But you'll get periodic questions from them.

We talk about COVID for an example. I would suspect that a lot of public agencies are getting calls from the rating agencies saying, "Okay, what's the impact of COVID on your revenue base? What's that doing to your general fund?" for an example. With the wildfires, climate change and so forth - what impact is that having on your organization? There may be a whole host of things, you know, back in 1999 and getting into Y2K way back when - a lot of questions around, "How are you prepared?" and so forth.

So, those kinds of questions - be prepared, answer the questions. A lot of times, they may put them in writing to give you time to research it. You don't have to every answer at your fingertips, but you need to get the answers and get back to them.

Similarly, you've got investor relations. Just because you sold your bonds and you're not looking to raise more capital, doesn't mean that your role in investor relationship management is over. Here's, again, two guides that are out there, both from CDIAC and GFOA. But you'll get periodic phone calls, or you may, you may not, but you may get periodic phone calls from an investor. And an investor being more like a fund, Putnam Fund, Fidelity, and so forth. You may get from their person who's tracking, you know, the fact that they are holding some of your bonds and they may ask you some questions.

Just caution you a little bit here, always answer the question, be prepared, but you also want to make sure that you're being transparent to the investor community. You don't want to necessarily give information to one investor without necessarily sharing it to everybody. The issue is, you've got to keep in mind that once you've sold your bonds, you may be done with direct interaction and you've got a set interest rate assuming you've done this on a fixed rate basis, but your bonds may be trading in the secondary market. If you give particular, non-public, financial information to one investor who then has an advantage on trading the bonds in the secondary market, you got to be very, very careful of that.

So, sometimes if an investor, again, if it's a real simple question, answer the question and then you'll be done with it. But if there's more detail, if it's a list of questions, have them put in writing, respond to them in writing, post it perhaps on your investor webpage, post it on EMMA possibly, just to make sure that you're disseminating it fairly throughout the community. It protects you and it protects investors.

And, of course, preserve your records. Even after you've made your final debt payment and the bonds have been retired, you have certain obligations for so many years thereafter. You might have a seven year record retention policy for your normal records, it's not the same for your bond-related records. You're going to keep them for the life of the bonds, and probably at least 5 to 7 years beyond that in case any particular issues come up after the fact. And again, some key reference material.

Slide 18 – Continuing Disclosure & Other Obligations 53:29

JAY GOLDSTONE: Finally, you've got your continuing disclosure, we've talked about that. It's not a major burden. I want to stress, and we put a lot of emphasis on it, but as a former issuer, it does not have to be a major burden. It's a major obligation that you've committed to, and you've got to take it seriously, but you're not recreating your POS.

You're predominantly, at a minimum, providing your annual CAFR, Comprehensive Annual Financial Report. You're going to do that anyways. If you've committed to produce them within 180 days and make sure you're going to meet that obligation, the investor community would like that probably in 90 days, or shorter. We know from a practical standpoint, from the issuer's perspective that's, most in most instances, just not practical.

But you'll have other continuing disclosure obligations that you'll need to do and it may be different data points that you've committed to in your continuing disclosure agreements related to utility customers, to consumption, to whatever it might be. Just because your financing team tells you that you should disclose something in your continuing disclosure agreement, if you don't think you can easily reproduce that on an annual basis, then push back. Tell them, "I can't do it." Explain why.

If they really think it's germane and critical to the bond deal, that's something you're going to have to negotiate. But don't just blanketly agree, but there's also some fundamental information that you're going to have to continually disclose. And different bond deals, if it's a water revenue bond it's going to be different kinds of disclosure information than if it's a certificate of participation or something along that line.

But you have your obligation for the life of the bonds. Just acknowledge that and align the responsibilities for various disclosures. It goes back to people who provided you with the customer information in the water utility, for an example. It may not be the name of the individual, but it may be the title of the desk so that you put that in your tickler system and make sure they know on an annual basis or semi-annual basis that they're going to have provide this kind of information, so that you're not just running around the last minute.

And then this material event notice, be prepared to file whenever appropriate. And what's a material event notice? Well, if you ask the SEC “what's material?” they will not give you a definition and heaven knows every organization and probably every major issuer over time has asked the SEC to define “material” and the SEC won't. They just say “you'll know it when you see it” or you'll know it when we come in and we tell you on a case-by-case basis. But the obvious ones, for example, are you're not going to get your CAFR done by December 31st for some reason, something happened, that's a material event notice.

File that on EMMA and work with your in-house lawyers, with your bond counsel, if you have a dissemination agent, work with them to help craft the language that basically explains why you're not going to meet this obligation and when you think you might be able to do it. So, if you think, “Well, I'm going to be 30 days late”, say that the expectation we'll have it by the end of January. Using that as an example, if you think you're going to be longer, explain that. If come the end of January, because that's the date you put in there, you're still not going to be able to do it, file another material event notice.

If you're downgraded by the rating agency, that's clearly a material event notice. Don't just assume the market is going to hear about it because the ratings agencies will put a letter out or something. No, don't assume it. It's your obligation to post it as a material event notice.

Anything else that's not going to happen. It may be some major revenue, if you have the top 10 taxpayers and two of them generate, let's say, 50% of your sales tax revenue and one of them is closing. That may be considered a material event so let the investors know that you're going to lose this big box and we're going to lose 25% or 50% of our sales tax revenue.

Doesn't mean that you've defaulted on bonds, it doesn't mean anything that you're not going to be able to make your payments, but that's significant material notice that you might want to disclose. So those are the kinds of things, again, you can discuss this with your bond counsel, with your internal counsel, when something happens, but you do have an obligation, you would post it on EMMA.

EMMA, is the repository system through the MSRB, Electronic Material Management… I always forget what EMMA actually stands for. Perhaps when Steve comes on, he'll remind me and you, but if you go to the MSRB.org and EMMA, you'll find that for those of you who don't know. Plus

EMMA is a good resource for other kind of information on other bond transactions that are taking place nationwide, or within your state, or within your geographical area.

Slide 19 – Continuing Disclosure Undertaking (CDU) 59:04

JAY GOLDSTONE: So, with that, I'll turn it back to Jacqui.

JACQUI JENNINGS: Okay, can you hear me? I had to change formats yet again.

JAY GOLDSTONE: We can hear you.

JACQUI JENNINGS: Excellent.

Okay, well, we're to the document that Jay has just introduced to us and I'm very happy that you designated it as not that burdensome. I personally don't think it is, but then again, I don't have to do it, so it's nice to have a viewpoint from an issuer on this.

Yes, we did talk about this on the continuing disclosure undertaking in session one, but on a very high level, we're going to get into a little bit more detail being mindful of the amount of time we have left for today.

Next slide, please.

Slide 20 – CDU: Parties, Purpose, Key Provisions, and Materiality 59:58

JACQUI JENNINGS: Okay, what is the CDU? And I'm using the generic terms "CDU" because sometimes, it will be a Continuing Disclosure *Agreement* so that there will be a another party that's involved as your dissemination agent with whom you have contracted to act on your behalf, to make the filings on EMMA. Or it could be a continuing disclosure certificate where you, as the issuer, take on the obligation and responsibility of making those filings on EMMA.

The parties that are going to be involved in your CDU, obviously, first and foremost is the issuer. If this is a conduit transaction, the borrower or obligated party, may have a separate CDU, obligating them to file or provide to the issuer to file on their behalf certain information by a date certain.

There may be a dissemination agent, there may be the trustee involved as the dissemination agent, but most trustees have gotten out of that business, but there still are a few who are acting in that capacity. Lastly, you may also have, and you will have input on the form of the document from the underwriter and underwriter's counsel. They may have opinions as to what information in the official statement should be updated annually.

As Jay said, the CDU, and as we discussed last week, is going to have two components. There is a component for the annual report. An annual report, as Jay highlighted, is going to consist of your CAFR, plus various tables and chart[s] that were originally in the official statement that you are going to agree to update annually, with information related to the most recently past fiscal year.

This is one of the areas where you need to really be diligent about looking at this document and seeing which of these tables can you or will you be able to, to recreate annually. As Jay said, there may have been this really nifty table that had lots of information and bells and whistles, but because you contracted with a third party at a very dear penny to get that particular information prepared. And while it's nice to have updated annually, it was important and makes sense and was relevant in the context of the initial issuance, but it's not something that you're going to spend money on each year to update.

So therefore, you want to make sure that you go through and you look through your, the continuing disclosure undertaking and see what it is you're actually obligating yourself on a contractual basis to update.

One of the things to make this a little bit easier is, with respect to information, particularly information that's provided by the issuer, think about incorporating that information into the statistical section of your CAFR, that way, it's all in one nice neat little package and you know that if your CAFR’s filed, you may have fulfilled all the rest of your obligations for updating various information, tabular information, that was in the official statement.

Generally, the second part of the CDU, you have the annual report and then you have this section that requires you to make filings on the occurrence of certain specified events. Sometimes they're called “material events” or “significant events” but whatever the nomenclature is, there is a list of events. There are now 16 of them that are enumerated in your continuing disclosure undertaking and you have to make a determination when those events occur, whether or not they are or are not material and when the disclosure has to be made. In some instances, you have 10 days, business days, following the occurrence; some you don't have that specific deadline.
The key provisions of your CDA is what's the content of your annual report, and what is the filing date for the annual report? When this requirement originally came into effect, most people were using a day count, that it was 210 days following the end of your fiscal year because that was the outside deadline that the SEC had articulated. And one of the things that we found out, as time went on, is that a 210 day count is not necessarily the same day, every year. So, you may have said, 210 days, and I'm not sure my calculations are right, but let's say March 30th. Well, some years it is, some years it's March 29th.

And so, what was happening is that you were noticing, you know, for some reason, somebody would put into their tickler system, that our annual reports are due by March 30th. And so, they would get the files March 30th. And then, you go back and you did a look back to see whether or not they are in compliance with their continuing disclosure undertaking. And you would find out that they were deficient by making their filings late by one day.

Late *is* late and so you do have to -- we're going to talk about this in a minute of what happens when you don't abide by your contractual obligation to provide continuing disclosure.

One of the things that's going to be necessary in some cases, is for you to determine whether or not the information is material. What is material? Even though the SEC won't tell you, we have hints of what material is. Information is material if it is likely that the reasonable investor would consider that information to be an important fact, or that the occurrence or non-occurrence of that event would alter the total mix of information that is available.

Next slide, please.

Slide 21 – Exchange Act of 1934 1:07:06

JACQUI JENNINGS: We're going to get legal for a little bit. And we're going to talk about the Exchange Act of 1934. The Exchange Act is important because it actually is the Act that established the SEC.

But it is a part of three Acts that were established after the Great Depression to bring sunlight truth, transparency, to the securities market. The other Act is the 1933 Securities Act, which is also called the Truth in Securities Law, and then the 1939 Trust Indenture Act, which you will see referenced in various opinions that are given in connection with the closing of your bond.

The whole purpose of all of these acts, as I said, is transparency. The Exchange Act of '34 was enacted to ensure that transactions in the secondary market and that is the market when the underwriters sell your bond to the public, that those trades are transparent, accurate, trying to promote an environment of fairness, and most importantly, maintain and inspire investor confidence in the efficacy of the system.

There's one section in the Exchange Act of 1934 under Section 10b, and the rules are -- wanting to see here is -- 10b-5, there is also other additions 10b-1, 10b-2, 3, 4, etc. But you'll notice that both of them are very similar. The most important thing is they are trying to prevent manipulative or deceptive devices in the market. And by doing that, the rule embodies that the SEC is trying to make sure that you do not make any untrue statement of a material fact in your official statement and anytime that you're speaking to the market. Next slide.

Slide 22 – How do I comply with Rule 10b-5? 1:09:40

JACQUI JENNINGS: Well how do you comply with the rule 10b-5? Jay touched on it a little bit, but the important things are whatever you say, be accurate. Don't omit any material information.

And the role 10b-5, the SEC has said rule 10b-5, applies whenever you speak to the market. Well, what does that mean?

It includes, obviously, your initial disclosure and your preliminary and final statement, your continuing disclosure filings, any voluntary filings that you may make, press releases, and information on your website.

The SEC has recognized that there is this constant stream of information, both formal and informal, on which the market is relying, and that as an issuer, you don't have the option of remaining silent. So you need to always be aware of what's going on with your jurisdiction. Is there information that you have access to that the investing public does not? As Jay had said this is also good for investor relations.

In fact, there were some question about whether rule 10b-5 applied to your continuing disclosure or voluntary filing that you make on EMMA and they said "No." They made it very clear that 10b-5 applies to disclosure and any other statements that the issuer makes to the market.

Next slide, please.

Slide 23 – Specified Events 1:11:29

JACQUI JENNINGS: This is a list of all specified events. Plus, there were two more that were, that were enacted and became effective February 27, 2019.

And you will notice, some of them are very are, as we call, *big ones*. A payment or interest delinquency or default, non-payment related defaults, unscheduled draws on debt service reserves. Some of these, you do not have to make a materiality determination, you will report those without regard to materiality.

There are some, such as modifications of the rights to security holders, for example, or releases, substitution, or sale of property, securing the repayment of the securities, that you are going to have to make a determination of materiality.

One of the beautiful things about this is that you do have access after the fact, with your municipal advisor who can help you in completing that analysis, your bond counsel, disclosure counsel, but, first and foremost, go within your finance department and your internal attorney to make the initial determination of "Is this material? Not sure, maybe we should bring in one of the counsels from the working group."

Next slide, please.

Slide 24 – Financial Obligation Amendments 1:13:08

JACQUI JENNINGS: As I said, the last February, two additional events were added, and these had to do with financial obligations.

Why did these come up? Well, what was happening is, we were in an era when a lot of debt was being incurred by issuers that wasn't bonded debt, they were through private placements, various loans, etcetera. And what was happening is that since they weren't bond issuances, investors were not able to have a really good sense of what your overall debt mix was.

So these two events, Events 15 and 16, have been in effect since February of last year.

So if, for Event 15, it addresses the issue of the incurrence a financial obligation and Event number 16 talks about the changes or default or acceleration of that financial obligation and if any of them are reflecting financial difficulty. OK, next slide.

Slide 25 – What was the Purpose of the Financial Obligation Amendments 1:14:38

JACQUI JENNINGS: Again, the purpose here was institutional investors were consistently raising concerns that there were all these bank loans out there and private placements, and this information was not being disclosed timely. And the only time that you were finding out that these financial obligations had been entered into was when the issuer filed their annual report and CAFR for the last year.

So actually, you were getting notice of these additional obligations about nine months after they may have occurred and they said, “That's not good enough.” For example, there have been, there's a couple of examples that I pointed out here that are more examples of heinous behavior that, for example, an issuer that had had a number of bank loans and they didn't let anyone know that the terms of those bank loans were going to negatively affect the holders of the bonds. And no one found out until actually, it was too late.

And so the whole idea, the new significance of this 15 and 16 is to eliminate the possibility of this type of occurrence because you will be making those filings on EMMA. Finally, following your entry into whatever that financial obligation.

Next slide.

Slide 26 – How Do I Know What Is or Is Not Reportable… 1:16:19

JACQUI JENNINGS: Okay, how do you know if it’s a financial obligation and if it's reportable or not? Well, we have a quick list here. This is not an inclusive list, but, generally, debt obligations are a financial obligation, direct purchase by an investor, entry into lines of credit, leases to borrow money, obligations that may affect your liquidity or the obligor’s bondholders’ rights, or your credit, or your credit rating, derivative interests, instruments like swap agreements or repurchase agreements, any type of guarantees - if you are guaranteeing the payment performance of some other entity.

Examples of what is not a financial obligation. The good news is that if you are a municipal securities that are being issued through the -- with an official statement, that you are having filed or filing on MSRB, is not a financial obligation, I mean, it's a financial obligation, but you don't have to do anything special, because there is an offering document for that, for those bonds, and it is filed on MSRB, which means it is available to the public. Most equipment leases don't fall into the category of a financial obligation, non-recourse leases, vendor leases.

We're looking for things that are long term, types of obligations that for which the issuer, has a significant repayment interest.

But to the extent that you have questions, reach out to your bond counsel, disclosure counsel, your finance department, and discuss it. And one of the things that is important is keeping your paper trail. So if you go through the analysis and you keep notes and you have a record of “We looked at this and we determined that this was not a financial obligation and it’s justifiable.” SEC is not going to really go behind that course of action and decision making. So, it's important that you have your system of how you're going to go about making this determination. What is the group that is going to do the analysis, and that may be part of your debt policy.

But again, keep good records, make this part of your file for that particular bond issuance so that you have everything that's related to that bond issuance in the same place.

Next slide, please.

Slide 27 – Financial Obligation Compliance Considerations 1:19:30

JACQUI JENNINGS: One of the important things to do when you're setting up your tickler system, is think about this from the standpoint of your organization, do you know when a financial obligation is incurred?

You have a sense of what and when those financial obligations are amended. Is there a way to monitor your outstanding financial obligations for defaults, or modifications, or similar events? You need to think about this, because this is going to be important in you complying with significant Events 15 and 16.

One thing I do want to point out is, for example, we have a number of issuers that said, "Yeah, we know this," and we actually asked them, "Well, how do you know?" and they said, "Because what happens is, before any contract or obligation over $5,000, or if it's for multiple years of $5,000, is approved or is executed. It goes through finance. I know that's not the case for every issuer, but finance actually gets to see all of these contracts before they're executed. So they do have a way to add them to their tickler system so that they can monitor them and then make a decision of whether or not this is a financial obligation that needs to be disclosed and posted on EMMA.

What happens if you fail to comply with all of these agreements that you made in your CDU? Well what happens is, number one, before you go back into the market, you have to rectify all your past failures. You will also need to disclose in your official statement on a five-year look-back period what all those failures were, and best practice is - also when they were rectified. And the biggest result or most heinous result is that if there are multiple infractions and continued infractions, this may lead to you not being able to access the market because, remember, this whole scheme, it's not regulating you, it's regulating the underwriters and if the underwriters cannot be assured that you will abide by your continuing disclosure undertaking -- I mean, for real and for true this time, if they're not certain of that, it's not just that selected underwriter may not be able to underwrite your bonds, *no* underwriter may be able to underwrite your bonds.

That's it. That's it for my part of the presentation.

Slide 28 – End of the Issue 1:22:47

JACQUI JENNINGS: The important thing is, be aware of -- way before it gets to closing, and before your first year for compliance with your continuing disclosure obligation. What's in it? Makes sure that it's something that you can do. Setup a tickler system, so that you have a checklist of all of the 16 Significant Events. And, at a minimum, the date that your annual report is due and just make sure you review this with your internal staff, and that everyone understands what it is they need to do when you need to comply.

STEVE HEANEY: Okay, I think I have control of this, but I don't know that for a fact.

Slide 29 – Refunding and Redemption 1:23:45

STEVE HEANEY: I'm going to try and wrap this up in the course of the next three minutes. If you've got questions on refundings, ask them during the Q and A. We're going to get to it. It'll be – we're going to run over just a little bit, but hopefully not too far over.

So, what happens at the end of the issue? Right, things happen probably a lot later now than they used to happen. There are two things that occur. One is refunding and the other is simply redemption at the last final maturity of the issue.

Slide 30 – Refunding 1:24:20

STEVE HEANEY: If we think about refundings, before we went to the market, one of the last things that we did was to set the call date for the bonds. The call date is the date on which the bond may be redeemed prior to maturity. And historically speaking, that call date generally has been 10 years out, maybe seven years out. There's a lot more flexibility with it now. But generally, it's going to be some number of years out. So, you can take a look at what you've got on your debt.

And what I want to suggest that you do is be proactive in terms of monitoring your debt. Monitor your tickler system that Jay was referring to. You probably ought to include monitoring the debt that you've got outstanding. You can do this on as simple a format as an Excel spreadsheet that compares the rates on your bonds with current rates and update that. Perhaps update that a couple of times a year if rates are moving a lot.

Why would you refund your bonds? Why would you take advantage of the call date to take funds away from the investors and issue new bonds to take those out. Generally it would be because of savings. There used to be the case that interest rates went up and down. Hasn't been the case for a while but it'll happen again. And generally speaking, when interest rates went down, you would see a difference between the rates on your bonds and the rates in the marketplace today and you would include a refunding.

There are two kinds of refundings generally that we used to talk about, "current refunding" versus "advanced refunding." Current refunding is a refunding that is accomplished within 90 days of the next call date. An advanced refunding is a refunding that's accomplished beyond 90 days to the next call date. The 2017 Tax Act, [got] rid of advance refundings, on a tax-exempt basis, but stay tuned, because there's an awful lot of pressure on Congress to bring those back and to give issuers back the flexibility that was taken away from them.

Okay, so monitor your debt. It is very simple. Look at the rates that you have versus the rates in today's market, and if you see 100 basis points, in terms of the gap -- 100 basis points is 1%. So, if you can see that kind of the gap it's probably worth having your financial advisor take a look at it in a real analysis.

Refundings are complex. They involve a lot of analysis. Don't try and do it all on your own. There are plenty of folks out there that can help you do it, but it's definitely worth taking a look at.

Slide 31 – Discharge and Defeasance 1:27:26

STEVE HEANEY: Why else would you refund the bonds? You might refund the bonds, not just for savings, but you also might want to change some of the covenants. Remember, when you issue, when you refund bonds, are issuing a brand new series, that means you get to start over again.

That's fine. Keep in mind that, when you start over, again, you've still got to be meeting the legal requirements, and you've got to pay attention to what you're doing, in terms of affecting the cost of the transaction.

Which brings me back to the final point on refundings, which is your debt policy ought to have in it, a minimum threshold of savings that will dictate when you are willing to undertake a refunding. Why should you have a minimum threshold of savings, because any bond issue costs money. You want to make sure that the savings it's accruing to you, to your entity, is really worth taking on.

So, you have a minimum level of savings. That's, in my experience, it's generally been expressed in terms of present value, and it's generally been between 3% and 5% present value savings. Although I've also seen a lot of issuers that have sliding scales that attract to the size of the issues and perhaps the remaining length of the issue.

Let's assume though that you didn't do a refund, and you let your bonds actually mature. What happens? You get to go out, and, like you do with a mortgage, burn your mortgage? Don't do that, please. As Jay referred earlier to, the requirements directories, there is a need to retain records, and you can refer to the CDIAC guidelines, you can also refer to GFOA which has got some best practices.

Final thing I would suggest is if you get to the end of your debt, contact the trustee. Find out from the trustee if they've got any proceeds remaining. Because if they do, you probably ought to get those and you may very well have some investment earnings over there, or whatever. With that, I'm going to turn it back over to Robert so that we can do some Q&A. Robert?

Slide 32 – Questions and Answers 1:29:29

ROBERT BERRY: All right.

We have quite a few questions here. I think we'll go over a few minutes, if that's okay with folks and, cover a few of the questions, a lot of legal document questions.

Here's a good one, Jacqui, is it possible to modify any of the requirements of the CDA after the bonds are issued? For instance, changing a filing date from that, for instance, 210 days after the fiscal year end, as opposed to, say, a specific date like January 30th. Can that document be modified?

JACQUI JENNINGS: It can, but it's cumbersome and generally it's not worth it. You need to get consent generally from the bondholders. And that's not really anything you want to do unless it's something really, really important.

One of the things that we have noticed that when continuing disclosure first came into effect, a lot of those bonds that had the day count have been refunded and so now what the trend has been is for issuers to select one date and be specific; that, we're going to file by April 30th and so, over time things have a lot of those older CDUs have now, those bonds underlying those, have been refunded and so, now, everything is now on one specific date. This is why it is more, more and more important for you to have your tickler spreadsheet that has it marked as to when those obligations for filings are.

And we have some issuers that have the A filings and the B filings. The B filings are all the current ones where they're all on one date, but they're still maybe two or three outstanding issues that still have a day count. And one of the things that is required in those particular CDUs is that whoever the dissemination agent is, every year, they are required to do the calculation of 210 days. Well, what is that date? What is the specific date that it's due and communicate that to the issuer so that reduces the likelihood of them having a late filing.

ROBERT BERRY: So, here's a related question. Relative to a member of the audience that has a third party vendor that handles their continuing disclosure and annual disclosure; are there best practices to know that your agent has submitted all the required disclosures for you?

JACQUI JENNINGS: Yes. Jay, you want to take that?

JAY GOLDSTONE: Yeah, well, Jacqui's short answer is yes. I mean, yes, it is again, your responsibility just because you contracted out with somebody. So, you should be checking with them. If you're using a dissemination agent. I mean, obviously, you're hoping that they're on top of it, and they're reminding you of certain things. That's where your tickler system comes in. And maybe you add that as another task in there. Because if you're using a dissemination agent, obviously, you're the one that's going to probably provide the information to that entity anyways before they can disseminate it.

But you need to stay on top of it clearly, and make sure that they're meeting their obligations on your behalf.

JACQUI JENNINGS: And in your continuing disclosure undertaking generally, it's going to be in section three, or, whatever section is, entitled "the content" or "the provision of the annual report." And there will be a section in there that says, if you have a dissemination agent, it will say what the dissemination agent is expected to do.

And, one of the things will be that they are expected, they're obligated to provide the annual report by, whatever the filing date is, if the issuer has not previously filed it, and if it's going to be late, there's generally a form that they will file that says it's going to be late and when would you expect the annual report to be available.

But, there's also, generally, another provision that we will include that says it is the responsibility of your dissemination agent to provide the issuer with a notice or a certain certificate, telling them that they have filed the annual report so that you have something that you can put in your file. And the other thing is since everything is filed on EMMA, you can go on and you can sign up so that you get you get notices when things get filed and you can just go and look and see if it's there.

STEVE HEANEY: If I could jump in, EMMA is the *Electronic Municipal Market Access.*

JACQUI JENNINGS: Yeah. I was going to tell you that. Okay.

ROBERT BERRY: Another, just to follow up, related question; a lot of questions about making sure folks fulfill their responsibilities, so that's a good thing. If you have a developer that's responsible for continuing disclosure, what's the impact on the city issuer, for instance, if the developer doesn't provide those filings?

JACQUI JENNINGS: Generally, you will have the developer enter into a separate agreement so that you have a bifurcated continuing disclosure undertaking. One for the things, the items, that the city or the issuer is going to be responsible for filing and updating, and one that is specific to the developer.

And what we have found is that, in general, the developers are fairly compliant. There may be some -- depends on the size of the developer, if they're a large, sophisticated developer, this is just one more thing to add in their checklist of items that they have to file anyway.

But, what has been the hammer, if you will, for issuers has been, "we're not going to issue more bonds for you." And one of the things that we have also found is that we had a developer that had had reneged on all of their continuing disclosure obligations for a neighboring jurisdiction. We found out about it. There's no way that we could be confident that they were going to abide by these obligations for us if they hadn't done it for the city down the road. So, we didn't, this is our issuer, our client did not, would not issue any bonds for them until there were various requirements put into place. They had to hire a separate dissemination agent that would setup a tickler for them and bug them and they had to bring in all of their disclosures for that other entity current.

And so that's really the only hammer that you have, is you can just say, "No, we're going to have to go another way," because if you are dealing with a recalcitrant developer, you can't enter into this agreement, this written undertaking in good faith, knowing that they are going to perform if they hadn't in the past and they are still out of compliance currently.

ROBERT BERRY: A couple of questions related to green financing. I'll select one here and this is related to the use of proceeds towards green objectives, the objectives of the project, that are environmental, climate neutral, etcetera. Are you seeing, Jacqui, that issuers are beginning to include the kind of ongoing reporting requirements relative to the use of proceeds in continuing disclosure documents, in their undertakings or agreements, or is that still handled separately outside those official customary agreements?

JACQUI JENNINGS: You know, the green bonds. We've done a number of them but they are of two categories. Either they were a refunding, so there was not any ongoing reporting because the project was already in place and they were just refunding bonds, and refunding them as green bonds. Or, they were for issuers that their very essence is green. Like, open space districts, park districts, things like that. So, that's been my experience thus far. I know that there are third party certification companies that are out there that, for a fee, will help you comply with those reporting requirements, but generally you only are complying with them until whatever the project that's being financed is completed. So that once that is completed, those reporting requirements tend to disappear.

ROBERT BERRY: Well folks, I just received a note from our wonderful captioner that, that we have a hard stop to get on to the next client. So just in the interest of making sure that we have our captioner along with us on this ride, I think we'll wrap it up. Again, we will follow up on any unanswered questions. There are a few that came in during registration and during the program, and we'll work with you to follow up on those answers.

So, let's see here.

Slide 33 – Municipal Debt Issuance Progress 1:39:54

ROBERT BERRY: So we've taken one full trip around the wheel of debt issuance, as I call it, but I'm sure many of you have questions that were not covered as deeply are broadly as you would have liked, simply because this webinar was intended to give you a high-level overview, to emphasize those most important aspects for you as a public finance official. And based upon the number of questions, I think, are you are understanding what those very important regulatory requirements were and to orient you to the process enough that you will know the right questions to ask and be able to use the supplemental materials that we talked about today. Whether they be provided by CDIAC or our other allied public finance organizations.

Please know that CDIAC intends to support you with additional educational programming and resources as we navigate all the challenges ahead.

Slide 34 – Connect with CDIAC 1:40:48

ROBERT BERRY: So, before you go, there are a variety of ways to contact CDIAC and stay up to date with what we are doing. You can follow us on Twitter and LinkedIn, we tweet quite a bit, but the best way is to go to the CDIAC website and subscribe to our ListServ. We will be producing some new virtual programing for the fall. As I mentioned last time, programming on climate change disclosure, land-secured financing, and investment programming as well as some other debt programs that we consider especially if COVID restrictions carry well over into the new year.

Then, again, I want to emphasize, finally, that a replay link will be sent out to all the registrants within a couple of weeks. But you can access these two webinars or any of our past webinars by going to our website.

In closing, on behalf of all of us here at CDIAC, I'd like to thank Jacqui Jennings, Steve Heaney, and Jay Goldstone for all of their time and expertise, and their dedication to the field of public finance, and in retirement no less.

And a big thank you to our CDIAC Education Team, Karen McMillen and Angela Ayala, they do a wonderful job; a lot of hard work behind the scenes planning and producing this webinar series.

And, of course, to all of you, thank you to all of you for joining us this morning. We look forward to you joining us for future programming. So long and have a great day.