

## Annual Training Re: Municipal Securities Disclosure



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## Glossary of Terms

- **Issuer** – Governmental entity that issues bonds
- **Financial Advisor/Municipal Advisor** – Financial advisor (municipal advisor) to an Issuer
- **Underwriter** – Company that purchases an issue of bonds
- **SEC** – Federal Securities and Exchange Commission
- **OS** – Official Statement
- **CDC** – Continuing Disclosure Certificate
- **EMMA** – Electronic Municipal Market Access  
<http://emma.msrb.org>
- **Dissemination Agent Agreement** – Agreement between Issuer and company that will post disclosure material on EMMA

## Roles of Bond Counsel vs. Disclosure Counsel

- **Bond Counsel**
  - Prepares Resolutions, bonds, loan agreement, closing certificates, CDC, and other closing documents
  - Delivers opinion that bonds are valid and legal obligations of the Issuer
  - Delivers opinion as to tax-exempt status of the bonds
- **Disclosure Counsel**
  - Conduct diligence on the Issuer and the bond offering
  - Prepares or closely reviews Official Statement, in conjunction with the Issuer's review of the Official Statement
  - Disclosure Counsel does not prepare or confirm financial information
  - Conducts in-depth review of previous continuing disclosure undertakings and the Issuer's compliance with such undertakings
  - Delivers "10b-5" opinion to Issuer (and to Underwriter)

## Disclosure Training Objectives

- Gain a better understanding of your post-issuance responsibilities and how to manage them
- How do we get there? This session will provide...
  - Overview of regulatory oversight and applicable rules relating to disclosure
  - Review of the contents of a Continuing Disclosure Certificate and Disclosure Policy
  - Discussion of how to comply with disclosure requirements

## Purpose of Disclosure

- The SEC wants municipal issuers to provide ongoing information about their debt issues
  - Ensures market transparency by making information available to the public
  - Ensures Bonds sold to investors on the secondary market are properly priced based on information provided by Issuers

## SEC Authority

- Issuers *are* subject to anti-fraud provisions of federal securities laws (Section 10-b(5) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Section 17(a) of the Securities Act of 1933)
- 1975 Amendments Creating the Municipal Securities Rulemaking Board (the MSRB) and adopting the Tower Amendment, which prohibits the SEC and the MSRB from directly requiring municipal issuers to register
- The SEC regulates Underwriters through Rule 15c2-12 (the “Rule”) under the Securities Exchange Act; because of the Rule, Underwriters are required to ensure that the Issuer contractually agrees to provide certain ongoing continuing disclosures

## Rule 15c2-12

- Two aspects of the Rule
  - 1) Prohibits an Underwriter from purchasing or selling Bonds without first determining the Issuer has agreed to provide ongoing disclosure of certain information, including
    - Annual financial information (often more than just audited financial statements)
    - Material event notices
  - 2) Requires the final Official Statement to include a description of any material non-compliance with continuing disclosure obligations in the five years prior to the offering

# Sample Official Statement

**NEW ISSUE - DTIC BOND BUYER ONLY** Bonded & Paid in "A"

*In the opinion of Dorsey & Whitney LLP, Bond Counsel, according to present laws, rulings and decisions and assuming compliance with certain covenants, the interest on the Series 2014B Bonds (including any original issue discount properly allocable to an owner thereof) will be excluded from gross income for federal income tax purposes. Interest on the Series 2014B Bonds is not an item of the proceeds for purposes of the federal alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code of 1986 (the "Code") provided, however, such interest is taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes). Interest on the Series 2014A Bonds is not excludable from gross income for federal income tax purposes. The issuer will designate the Series 2014B Bonds as "qualified tax exempt obligations." See "TAX EXEMPT STATUS AND DTIC TAX MATTERS" herein.*

**\$26,700,000**  
**Issue**  
**General Obligation Annual Appropriation Corporate Purpose Bonds**  
**\$1,500,000 Series 2014A, (Taxable)**  
**\$1,450,000 Series 2014B**

**Dated:** Date of Delivery **Due:** As shown on inside cover

The General Obligation Annual Appropriation Corporate Purpose Bonds, Series 2014A (Taxable) (the "Series 2014A Bonds") and Series 2014B (the "Series 2014B Bonds") described above (collectively, the "Bonds") are issuable as fully registered Bonds in the denomination of \$1,000 or any integral multiple thereof and, when issued, will be registered in the name of Code & Co., as Bondholder and issuer of the Depository Trust Company, New York NY ("DTC"), DTC will act as securities depository for the Bonds. Purchases of the Bonds will be made in book-entry form. See "THE BOND: Book Entry Only Notes" herein.

The Bonds are being issued by the City of \_\_\_\_\_, Iowa (the "Issuer" or "City") in the aggregate principal amount of \$2,670,000, to evidence the City's obligation under a certain loan agreement (the "Loan Agreement") for the purpose of paying the cost, to that extent, of constructing street, water systems, sanitary sewer systems, sidewalks and storm water drainage improvements. The Bonds are issued pursuant to the provisions of Chapters 78 and 304 of the Code of Iowa, and all other laws, administrative orders and regulations thereunder, and in conformity with a resolution adopted \_\_\_\_\_ 2014 by the City Council, authorizing and approving the Loan Agreement and providing for the issuance and securing the payment of the Bonds (the "Resolution").

The Bonds are general obligations of the Issuer, subject to non-appropriation, payable from amounts to deposit to the City's Debt Service Fund and the Bond Fund created in the Resolution, and other amounts as may be lawfully available at the time appropriated by the City Council for the purposes thereof. The Bonds do not constitute an obligation payable from a continuing annual levy of ad-valorem taxes or a multiple Fixed Tax, nor does it constitute a debt or other financial obligation whatsoever of the City. The Bonds do not directly or indirectly obligate the City to make any payments thereon during a Fixed Tax year beyond any Fixed Tax for which Bonds have been appropriated by the City. The City has no payment obligations under the Bonds other than amounts appropriated for a payment due on the current Fixed Tax. In the event that the City Council of the City does not budget and appropriate Bonds for any Fixed Tax in an amount sufficient to pay the principal and interest due on the Bonds during such Fixed Tax Year, the City's obligations under the Bonds shall terminate and become null and void on the last day of the fiscal year for which the necessary Bonds were appropriated. Upon the occurrence of any such non-appropriation, the City shall not be obligated to make payments from any source (including Bonds on deposit in any fund created under the Resolution) if any amounts in respect of principal and interest on the Bonds beyond those amounts for which an appropriation has previously been made, and the City shall not be liable to the holders of the Bonds for any other amounts due under the Bonds or for any costs, damages (including but not limited to consequential damages) or expenses incurred by the holders of the Bonds as a result of the non-payment by the City of the foregoing right of non-appropriation.

The Bonds involve certain investment risks. See "BONDBOLDERS' RISKS" herein.

Interest on the Bonds is payable on June 1, and December 1, in each year, beginning December 1, 2014 to the registered owners thereof. Interest shall be payable by check or draft of the Paying Agent named in the person who were registered owners thereof as of the 15th day of the month immediately preceding the Interest Payment Date, to the address appearing on the registration books maintained by the Paying Agent or to such other address as is furnished to the Paying Agent in writing by a registered owner.

The Bonds maturing on or after June 1, 2021, may be called for redemption by the Issuer and paid before maturity beginning June 1, 2021 or any day thereafter, from any funds or other source, in whole or from time to time or part in any order of maturity and within an annual maturity by 10%. The terms of redemption shall be set forth in the call notice.

The Bonds are being offered when, so and if issued by the City and accepted by the Underwriter, subject to receipt of an opinion as to legality, validity and tax exemption (with respect to the Series 2014B Bonds) by Dorsey & Whitney LLP, Dan Manton, Iowa, Bond Counsel and Disclosure Counsel. It is expected that the Bonds in the definitive form will be available for delivery through the facilities of DTC on and about June 26, 2014.

The date of this Official Statement June 16, 2014



ANNUAL TRAINING RE: MUNICIPAL SECURITIES DISCLOSURE

# Responsibility for Official Statement

- Issuers are primarily responsible for the content of their disclosure documents, regardless of who prepared the document
- An Issuer does not discharge its disclosure obligations by hiring professionals to prepare the official statement
- An Issuer has "an affirmative obligation" to know the contents of its official statement, including the financial statements
- Executing an official statement without first reading the document to ascertain whether it is accurate may be reckless (the basis for certain anti-fraud causes of action by the SEC)
- The SEC can bring enforcement actions against Issuers, members of its governing body, government employees and officials, and professionals working on the issue
  - As an example, in 2008 the SEC charged several former San Diego city officials with fraud in connection with false and misleading statements in the official statement. In October of 2010, four of the former San Diego city officials settled with the SEC, agreeing to financial penalties ranging from \$5,000 to \$25,000 (this was the first instance of the SEC securing financial penalties against city officials in a muni bond fraud case).
  - In another example, in 2013, the SEC charged the City of Miami and its former budget director with securities fraud in connection with several bond offerings and disclosures made to the public.
    - (more on this later)



ANNUAL TRAINING RE: MUNICIPAL SECURITIES DISCLOSURE

## Final Official Statement

- To satisfy Rule 15c2-12, an Official Statement often includes a statement listing:  
*“any instances in the previous five years in which [the Issuer] failed to comply, in all material respects, with any previous undertakings in a written [disclosure agreement].”*
- Example found in an Official Statement:  
*“During the past five years, the Issuer has not failed to comply, in all material respects, with any previous undertakings it has entered into with respect to the Rule”*

## Final Official Statement

- If the Issuer has not complied with the continuing disclosure obligations of previous bond issues, but makes the statement shown on the previous slide as to compliance, this could constitute a material misstatement and subject the Issuer to an SEC enforcement action under anti-fraud provisions of federal securities laws
- Examples of noncompliance with continuing disclosure obligations:
  - Failure to report material event
  - Failure to file annual information
  - Late filing of material event or annual information

# Sample Continuing Disclosure Certificate

**CONTINUING DISCLOSURE CERTIFICATE**

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the City of \_\_\_\_\_, Iowa (the "Issuer"), in connection with the issuance of \$1,000,000 General Obligation Corporate Purpose Bonds, Series 2014 (the "Bonds") dated May 13, 2014. The Bonds are being issued pursuant to a resolution of the Issuer approved on April 26, 2014 (the "Resolution"). The Issuer is currently in compliance in all material respects with each undertaking previously entered into by it under the Rule, as hereinafter defined. The Issuer covenants and agrees as follows:

**Section 1. Purpose of the Disclosure Certificate.** This Disclosure Certificate is being executed and delivered by the Issuer for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriters in complying with S.E.C. Rule 15c-12.

**Section 2. Definitions.** In addition to the definitions set forth in the Resolution, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"Beneficial Owner" shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositors, or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

"Dissemination Agent" shall mean the Dissemination Agent, if any, designated in writing by the Issuer and which has filed with the Issuer a written acceptance of such designation.

"Holder" shall mean the registered holder of the Bonds, as recorded in the registration books of the Registrar.

"Listed Event" shall mean any of the events listed in Section 5(a) of this Disclosure Certificate.

"Municipal Securities Rulemaking Board" or "MSRB" shall mean the Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, VA 22314.

"National Repository" shall mean, at any point in time, a nationally recognized municipal securities information repository which is then recognized as such by the SEC, as of the date of this Disclosure Certificate, the sole National Repository is the MSRB, which accepts filings via its Electronic Municipal Market Access (EMMA) system at <http://www.msrb.org>.

"Participating Underwriter" shall mean any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"Repository" shall mean each National Repository and each State Repository.

"Rule" shall mean Rule 15c-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

"State" shall mean the State of Iowa.

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## Continuing Disclosure Certificate

- Annual Reports
  - Audited financials
  - Tables, schedules or other financial information contained in the Official Statement (including Appendix A), for example:
    - Valuations
    - Gross Taxable Valuation by Class of Property
    - Trend of Valuations
    - Larger Taxpayers
    - Debt Ratios
    - Levies and Tax Collections
    - Tax Rates

## Continuing Disclosure Certificate Material Listed Events

- 1) Payment delinquencies
- 2) Non-payment related defaults, if material
- 3) Unscheduled draws on debt service reserves reflecting financial difficulties
- 4) Unscheduled draws on credit enhancements reflecting financial difficulties
- 5) Substitution of credit or liquidity providers, or their failure to perform
- 6) Adverse determinations with respect to the tax status of the bonds
- 7) Modifications to rights of holders, if material
- 8) Bond calls, if material, and tender offers
- 9) Defeasances
- 10) Release, substitution, or sale of property securing repayment of the securities, if material
- 11) Rating changes
- 12) Bankruptcy, insolvency, receivership or similar event of the obligated person
- 13) Merger, consolidation, or acquisition involving an obligated person, if material
- 14) Appointment of a successor or additional trustee or the change of name of a trustee, if material

## SEC Trend of Municipal Entity Oversight

- Before the 2007 financial crisis, the SEC was less focused on municipal entities
- Steps have since been taken to increase federal regulatory oversight (e.g., Dodd Frank Act)
- In recent years the SEC has expressed concern regarding Issuers' compliance with disclosure obligations
- Consequently, the SEC continues its transition into an active regulatory body for Issuers



## 2013 – Year of Firsts by the SEC

- SEC penalties assessed against an Issuer
- SEC charges an Issuer with violation of a cease and desist order
- SEC charges an Issuer with falsely stating to bond investors that it had been properly providing annual financial information and notices required as part of its prior bond offerings
- SEC charges an Issuer for materially misleading statements outside of securities disclosure documents (*City of Miami*)
- Demonstration that small size of an Issuer does not equate to a pass for disclosure deficiencies (*West Clark Community Schools*)

- City of Harrisburg, PA (May 6, 2013)
  - The SEC charged the City of Harrisburg, PA, with securities fraud for its misleading public statements when its financial condition was deteriorating and financial information available to municipal bond investors was either incomplete or outdated
  - The SEC notes that public officials should be mindful that their written or oral public statements may affect the total mix of information available to investors
- City of Miami, FL (July 16, 2013)
  - In mid-July, the SEC charged the City of Miami and its former Budget Director with securities fraud in connection with several municipal bond offerings and other disclosures made to the bond investing public
  - SEC investigation found that beginning in 2008, Miami and the former Budget Director made materially false and misleading statements and omissions about certain interfund transfers in three 2009 bond offerings totaling \$153.5 million

- West Clark Community Schools (July 29, 2013)
  - “This is the first time the SEC has charged a municipal issuer with falsely claiming in a bond offering’s official statement that it was fully compliant with the annual disclosure obligations it agreed to in prior offerings, and an underwriter and its principal for not doing the necessary research to attest to the truthfulness of that claim,” said Andrew Ceresney, Co-Director of the Division of Enforcement. “West Clark Community Schools defrauded bond investors by leading them to believe that it had provided the annual financial information contractually required in a prior bond offering, when in fact for five years they failed to submit the required information. This case demonstrates that we will be vigilant in making sure municipal issuers and underwriters comply with their obligations.”

## 2014 SEC Increasing Involvement Via MCDC

- On March 10, 2014, the SEC announced its “Municipalities Continuing Disclosure Cooperation Initiative” (the “MCDC Initiative”), which allowed Issuers to self-report instances of materially inaccurate statements in official statements until December 1, 2014
- Several Issuers and Underwriters participated in the MCDC Initiative to receive favorable settlement terms from the SEC
- MCDC Status Update:
  - 72 Underwriter Orders
  - 72 Issuer Orders

## 2015-2016 MCDC Guidance

- The SEC issued orders against 72 Underwriters
  - Fined \$18 million in the aggregate, ranging from \$20,000 to the \$500,000 ceiling per Underwriter
  - Orders were issued in 3 batches
    - June 18, 2015
    - September 30, 2015
    - February 2, 2016
  - Orders include one to three examples of noncompliance per Underwriter, which provide the basis of determining what the SEC considers to be material noncompliance and misrepresentations

## Examples of Material Non-compliance

- An Official Statement must disclose any of the following
  - Failure to make at least one Audited Financial Statement or Annual Report filing
  - Annual filing made at least 33 days late
  - Failure to file cross-reference to annual filing elsewhere on EMMA
  - Failure to file material event notice regarding the advance refunding and associated redemptions of certain bonds

## Other MDCD Underwriter Order Guidance

- Silence in an Official Statement regarding history of compliance is deemed to be a statement of material compliance
- A notice of failure to comply must also accompany a late/missing filing
- Noncompliance must be disclosed, even if missing filings are updated prior to printing the Official Statement
- A misstatement/omission cannot be “cured” by subsequently filing an amendment to an Official Statement (in one case 4 months after the Official Statement was printed)

## MDCD Guidance (Issuer Orders)

- On August 24, 2016, the SEC publicized 71 settlements with issuers from 45 states based on disclosure failures that occurred between 2011 and 2014
- The issuers that settled included: two states; seven state authorities; 29 localities; seven local authorities; nine school districts or charter schools; six colleges or universities; five health care providers; five utilities; and one retirement community
  - Two of which were Iowa municipalities

- Issuers settled without admitting or denying the findings and agreed to cease and desist from future violations, and no fines or civil penalties were assessed.
- Each Issuer agreed to establish appropriate written policies, procedures, and training regarding continuing disclosure obligations and comply with their existing continuing disclosure undertakings, including
  - updating past delinquent filings within 180 days;
  - disclose the settlement in future offering documents for the next five years;
  - certify in writing compliance with the undertakings; and
  - cooperate with any subsequent investigations by the SEC
- Precise Language of History of Noncompliance is Imperative
- Scrupulous research of history of compliance with continuing disclosure undertakings is absolutely necessary to develop precise language
  - Not just administrative checklist that ‘some filing’ is made
  - Ensure substance of each filing satisfies the Issuer’s undertakings

## MCDC Issuer Order Guidance

- As an example of the guidance provided by the SEC:
  - In an order against Idaho Housing and Finance Association, the SEC noted that the Authority “made a materially misleading statement and a material omission about its prior compliance with its earlier continuing disclosure agreement” in stating it “had filed some annual reports late, but failed to disclose that Respondent had not filed the annual financial statements that it had agreed to provide” for prior years and “misrepresented that these financial statements were contained in official statements that had been disseminated earlier;” and in a 2012 “final official statement [which] made no statement about compliance with Respondent’s prior continuing disclosure agreement and thereby failed to disclose that Respondent had not filed the annual financial statement that it had agreed to provide for fiscal year 2010 by the time of the offering, though due before.”

- If information is submitted elsewhere on EMMA, the failure to file cross-reference filings is deemed by the SEC to be material non-compliance
- Similarly, timely making filings in the wrong location (and not correcting the location for 245 days) constitutes non-compliance, per the City of Memphis, Tennessee Order
- Failure to link timely filed official statement or annual information to the CUSIP of each outstanding security, constitutes non-compliance per State of Minnesota Order
- Failing to include all required content in the annual financial information constitutes non-compliance, per Lawrence & Memorial Hospital, Inc. and Lawrence & Memorial Corp.
- Failure to file notice of defeasance constitutes material non-compliance
  - The SEC noted in the Ascension Health Alliance Order that this caused the bonds to be “Trading with significantly different credit structures for up to two years”

- Non-compliance is based on a continuing disclosure agreement entered into and not just Rule 15c2-12.
  - If the Issuer undertakes obligations additional to the minimum required in the rule and fails to comply therewith, such non-compliance must be disclosed
    - Missing or late interim reports (e.g. quarterly reports), though not required by the Rule, must be filed if required by the continuing disclosure undertaking, per the Carilion Clinic, Virginia Order
- Even if in a private offering involving an offering circular representing compliance, the SEC found an Issuer entering into a continuing disclosure agreement to market the securities must provide an accurate statement of prior noncompliance, Per Sanitary District of the City of Gary, Indiana
- Staleness of non-compliance is not a compelling factor, if occurring within past five years, per City of Andover Kansas, where non-compliance of past three years was disclosed, but not of five-year-old filing

## 2015-2016 Financial Penalties for Employees

- SEC brought claims involving misrepresentation and omissions.
- SEC claimed the Official Statement for Refunding Revenue Bonds was misleading in its treatment of one key metric regarding Westlands debt service coverage ratio. In prior bond offerings Westlands had covenanted to fix and collect water rates sufficient to generate net revenues equal to at least 125% of its debt service payments. The table representing coverage of the debt service covenant was deemed to be misleading because Westlands failed to disclose that it had engaged in extraordinary accounting transactions solely to recognize additional revenue for purposes of calculating the debt service coverage ratio without raising rates on customers and the impact of the adjustment to account for expenses that would have decreased revenue for purposes of calculating the ratio. Staff informed Birmingham and Ciapponi that, because of the reductions in water supply, Westlands would not generate sufficient revenue to achieve the debt service coverage ratio. See In the Matter of Westlands Water District, Thomas W. Birmingham, and Louie David Ciapponi, Sec. Act. Rel. No. 10053 (March 9, 2016) (imposing \$125,000 penalty on water district, \$50,000 on general manager, and \$20,000 on assistant general manager); SEC v. Gary J. Burtka, No. 14-cv-14278, Litig. Rel. No. 23229 (E.D. Mich. Apr. 6, 2015) (imposing \$10,000 penalty on former city mayor)

- SEC brought fraud charges against the City of Allen Park, Michigan and two former city officials, former mayor Gary Burtka and former city administrator Eric Waidelich, in connection with an offering of municipal securities issued to finance a movie studio project in the city. This case was the SEC's first enforcement action against a former mayor. The former mayor was held liable as a "control person" for the city and the city administrator's violations of the antifraud laws. The complaint stated that the former mayor was "an active champion of the project and was in a position to control the actions of the city and the former city administrator with respect to the fraudulent bond issuances. Based on this control, the SEC charged Burtka with liability for violations committed by the city and the former city administrator." SEC v. Gary J. Burtka, No. 14-cv-14278, Litig. Rel. No. 23229 (E.D. Mich. Apr. 6, 2015)

- In 2016 the SEC brought fraud charges against the Town of Ramapo, New York, the town's local development corporation (Ramapo Local Development Corporation or "RLDC"), and town officials for failing to adequately disclose the town's failing financial condition. SEC filed on April 14, 2016 its complaint against the Town and four town officials who allegedly hid a deteriorating financial situation from their municipal bond investors. The SEC alleged that Town officials resorted to fraud to hide the strain in the town's finances caused by the approximately \$60 million cost to build a baseball stadium as well as the town's declining sales and property tax revenues. The SEC also alleges that Town officials cooked the books of the Town's primary operating fund to falsely depict positive balances between \$1.4 million and \$4.2 million during a six-year period when the town had actually accumulated fund balance deficits as high as nearly \$14 million. According to the SEC's complaint, inflated general fund balances were used in offering materials for 16 municipal bond offerings by Ramapo or the RLDC to investors, who consider the condition of a municipality's general fund when making investment decisions. After town supervisor Christopher P. St. Lawrence purposely misled a credit rating agency about the town's general fund balance before certain bonds were rated, he told other town officials to refinance the short-term debt as fast as possible because "we're going to all have to be magicians" to realize the purported financial results.

- According to the SEC's complaint:
  - Christopher P. St. Lawrence, who served as RLDC's president in addition to being town supervisor, masterminded the scheme to artificially inflate the balance of the general fund in financial statements for fiscal years 2009 to 2014.
  - St. Lawrence and Aaron Troodler, a former RLDC executive director and assistant town attorney, concealed from investors that RLDC's operating revenues were insufficient to cover debt service on bonds to finance the stadium.
  - Town attorney Michael Klein helped conceal outstanding liabilities related to the baseball stadium and repeatedly misled the town's auditors about the collection of a \$3.08 million receivable recorded in the town's general fund for the sale of a 13.7-acre parcel of land to the RLDC. But because the title of the property was never transferred from the town to the RLDC, Klein also made misleading statements about the receivable's source.
  - Troodler helped conceal the fictitious sale and boost the account balance of the town's general fund by approving RLDC financial statements reflecting a purchase of property that never actually occurred. Troodler also signed offering documents that contained an additional fabricated receivable totaling \$3.66 million for another transfer of land from the town to the RLDC. The only land transferred from the town to the RLDC during the time of the purported transaction was property donated for the baseball stadium, which St. Lawrence and Troodler knew did not impose any payment obligation on the RLDC.



- The town's deputy finance director Nathan Oberman participated in activities to inflate the town's general fund by arranging \$12.4 million in improper transfers from an ambulance fund to bolster the troubled general fund during a six-year period. Further because the stadium bonds issued by the RLDC were guaranteed by the town, certain officials also masked an operating revenue shortfall at the RLDC and failed to inform investors that the town would likely need to subsidize those bond payments and further deplete its general fund. The U.S. Department of Justice ("DOJ") also brought criminal charges against Christopher St. Lawrence, the town supervisor, and Aaron Troodler, the assistant town attorney and executive director of the local development corporation, consisting of 22 counts of securities fraud, wire fraud, and conspiracy—the first criminal securities fraud case brought against city officials for accounting fraud in connection with the sale of municipal bonds. Troodler pled guilty in March 2017 and was ordered to pay a \$20,000 fine and a special assessment of \$200, and was sentenced to three years of probation. Troodler was also disbarred as a result of his felony conviction. St. Lawrence was found guilty by jurors in May 2017 of securities fraud, wire fraud, and conspiracy. In November 2017 the U.S. District Court for the Southern District of New York permanently enjoined the Town and the local development corporation from violating the antifraud provisions and ordered them to retain independent consultants to review and recommend improvements to financial reporting procedures and controls and disclosure practices and to adopt such recommendations, to retain independent auditing firms, and for a period of three years, to retain separate disclosure counsel (unaffiliated with bond counsel) prior to proceeding with the offering or sale of municipal securities. In January 2018 St. Lawrence was sentenced to 2 1/2 years in prison. The SEC actions against Troodler, St. Lawrence and other individuals in the matter have been put on hold pending the final outcome of the criminal proceedings.

- In August 2017 the SEC charged the Beaumont California Financing Authority with negligence for failing to accurately disclose in its bond disclosure documents its failure to materially comply with its prior continuing disclosure obligations. The financing authority, its former executive director, the underwriting firm (O'Connor & Company Securities Inc.), and the lead individual underwriter each agreed to settle the charges. Among other settlement terms, the financing authority's former executive director agreed to pay \$37,500 and to be barred from participating in future bond offerings, the underwriting firm agreed to pay \$150,000, and the lead underwriter agreed to pay \$15,000 and be subject to a six-month suspension. According to the SEC's order, the Beaumont Financing Authority had issued approximately \$260 million in municipal bonds in 24 separate offerings from 2003 to 2013 for the development of public infrastructure. For each of those offerings, a community facilities district established by Beaumont agreed to provide investors with annual continuing disclosures, including important financial information and operating data. From at least 2004 to April 2013, the district regularly failed to provide investors with the promised information. The Beaumont Financing Authority failed to disclose this poor record of compliance when it conducted the 2012 and 2013 offerings totaling more than \$32 million. As a result, the bonds appeared more attractive and investors were misled about the likelihood that the district would comply with its continuing disclosure obligations in the future.

- In a complaint filed in the Eastern Division of the U.S. District Court for the Central District of California, the SEC charged Beaumont's then-city manager Alan Kapanicas, who also served as the Beaumont Financing Authority's executive director. According to the complaint, he approved and signed the misleading offering documents. Kapanicas agreed to settle the charges without admitting or denying the allegations, and pay a \$37,500 penalty. He also agreed to be barred from participating in any future municipal bond offerings. In consenting to an SEC order without admitting or denying the findings, the Beaumont Financing Authority agreed to retain an independent consultant to review its policies and procedures. It also is required to establish appropriate and comprehensive policies, procedures, and training for employees as well as designate a compliance officer in order to ensure compliance with continuing disclosure agreements. O'Connor & Company Securities Inc. and its co-founder and former primary investment banker Anthony Wetherbee agreed to settle the charges against them without admitting or denying the SEC's findings. O'Connor & Company Securities Inc. will pay a \$150,000 penalty and retain an independent compliance consultant to review its policies and procedures. Wetherbee will pay a \$15,000 penalty and serve a suspension from the securities industry for six months. The SEC noted that the parties "would have been eligible for more lenient remedies had they self-reported during the MCDC Initiative." See SEC Press Release 2017-148, August 23, 2017, available at [www.sec.gov/news/press-release/2017-148](http://www.sec.gov/news/press-release/2017-148).

## Implementing Policies and Procedures Regarding Municipal Securities Disclosure

- **To help ensure your compliance with disclosure obligations we recommend Issuers adopt policies and procedures relating to:**
  - **Primary Disclosure:** The disclosure document (Official Statement) for the bonds
  - **Secondary Disclosure:** Ongoing disclosures associated with outstanding bond issues (aka "continuing disclosure")

## Implementing Policies and Procedures Regarding Municipal Securities Disclosure

- The Dorsey-provided Policies and Procedures (the “Policy”) addresses three aspects of disclosure:
  - 1) Preparation and approval of official statements in connection with new bond issues;
  - 2) On-going continuing disclosure requirements under a CDC; and
  - 3) Education of staff and elected officials with respect to disclosure matters.

### 1. New Offerings of Bonds – Official Statements of the Issuer

- Under federal anti-fraud law, an OS cannot contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading
- An Underwriter, Municipal Advisor, or law firm may assist you in preparing the OS, but it **is imperative that you review the OS for accuracy before it is published.** Failing to do so could result in untrue statements, thereby subjecting the Issuer and/or individuals to liability

## 1. New Offerings of Bonds – Official Statements of the Issuer

- Appendix I of the Policy provides written procedures for preparing the OS, comprised of 5 steps:
- **Step 1**  
At the commencement of a financing, the appointed Disclosure Officer shall develop or cause its finance team to develop a plan for preparation of the official statement and a schedule that allows sufficient time for all required work, including appropriate review and participation by members of the financing team and knowledgeable Issuer staff

## 1. New Offerings of Bonds – Official Statements of the Issuer (Step 2)

- **Step 2**  
The Disclosure Officer shall be responsible for managing the preparation process for the official statement, and shall obtain the assistance of other participants within the Issuer and legal and financial professionals, as necessary and appropriate
- **Step 3**  
The Disclosure Officer shall be responsible for developing a program for coordinating staff review of the disclosure information and obtaining formal sign-off from staff on the disclosure documents

## 1. New Offerings of Bonds – Official Statements of the Issuer

- **Step 4**  
The Disclosure Officer shall ensure that any previous failure to fully comply with continuing disclosure obligations during the prior five year period is disclosed in the official statement
- **Step 5**  
The Issuer's governing body shall be given not less than 7 days to review an official statement prior to being asked to vote on its approval, absent extenuating circumstances. Elected representatives on the governing body shall be directed to contact the Disclosure Officer during the review period to discuss potential issues or comments on the official statement.

## 2. Continuing Disclosure Compliance (CDC Compliance)

- The Issuer will file, or cause to be filed, necessary items under the CDCs in a searchable electronic format at the Electronic Municipal Market Access (EMMA) portal ([www.emma.msrb.org](http://www.emma.msrb.org)).
- To ensure compliance, Appendix II of the Policy provides 13 points for continuing disclosure

## 2. Continuing Disclosure Compliance (CDC Compliance—Appendix II)

### 1. Overall Responsibility for CDC Compliance

The applicable employee of the Issuer (“Disclosure Officer”) shall be responsible for compliance with the Issuer’s CDCs, including:

- Annual filings
- Material event notice filings
- Voluntary filings
- Other filings required by the CDC

## 2. Continuing Disclosure Compliance (CDC Compliance—Appendix II cont’d)

### 2. Discussion of CDC

Prior to execution of a CDC in connection with a bond issue, to ensure full understanding of the Issuer’s obligations, the CDC shall be discussed with:

- Bond counsel
- Underwriter
- Financial Advisor

## 2. Continuing Disclosure Compliance (CDC Compliance—Appendix II cont'd)

### 3. Public Statements and Information

- The Disclosure Officer shall have primary responsibility for ensuring that statements or releases of information relating to the Issuer’s finances to the public that are reasonably expected to reach investors and the financial markets are accurate and not misleading in any material respect, including:
  - Website updates
  - Press releases
  - Market notices
- The public officials and the Disclosure Officer shall work together to ensure that all public statements and information released by the Issuer are accurate and not misleading in all material respects

## 2. Continuing Disclosure Compliance (CDC Compliance—Appendix II cont'd)

### 4. Outstanding Bond Issues

The Disclosure Officer shall be responsible for compiling and maintaining a list of all outstanding bond issues subject to continuing disclosure, noting the applicable filing dates. Track this information using “Disclosure Table, Part I” of the Policy

**Master Tracking Table**

Name of Bond Issue	Date of Issue	Final Maturity Date	Dissemination Agent?	CUSIP for Final Maturity	Deadline for Annual Report

## 2. Continuing Disclosure Compliance (CDC Compliance—Appendix II cont'd)

### 5. Copies of CDC, OS, Dissemination Agent Agreement Materials.

The Disclosure Officer shall be responsible for assembling and maintaining copies of the final CDC and final Official Statements for each applicable bond issue, together with any third-party Dissemination Agent Agreements, if applicable

## 2. Continuing Disclosure Compliance (CDC Compliance—Appendix II cont'd)

### 6. Documentation/Tracking Information to File

The Disclosure Officer shall document and track the required information to be filed, including dates such information is filed, using “Disclosure Table, Part II” of the Policy

[Name of Bonds][date of issue] Description of Financial Information / Operating Data to file on EMMA	Reporting Periods			
	FY2013	FY2014	FY2015	FY2016
[audit]				
[list applicable tables in Official Statement]				
[unaudited financials, if audit not available by deadline]				
[other information]				



## 2. Continuing Disclosure Compliance (CDC Compliance—Appendix II cont'd)

### 7. Email Reminders from EMMA

The Disclosure Officer shall be responsible for registering for continuing disclosure filing email reminders from the “EMMA” website (<http://emma.msrb.org>).

### 8. Compile Information Required by the CDCs

At least 30 days prior to the earliest filing deadline listed on the Disclosure Table, the Disclosure Officer shall begin the process of compiling necessary information required by the CDCs

- This may require coordinating with outside professionals hired to compile this information, such as Dissemination Agent or Municipal Advisor

## 2. Continuing Disclosure Compliance (CDC Compliance—Appendix II cont'd)

### 9. Ensure Completeness of Filing

At least 10 days prior to each filing deadline, the Disclosure Officer shall determine whether all necessary items have been compiled for filing pursuant to the CDC requirements

- This may require coordinating with outside professionals hired to compile this information, such as Dissemination Agent or Municipal Advisor

## 2. Continuing Disclosure Compliance (CDC Compliance—Appendix II cont'd)

### 10. Conduct Filing

- At least 3 days prior to each filing deadline, the Disclosure Officer shall file (or cause any Dissemination Agent to file) the necessary items on the EMMA website
- After filing, the Disclosure Officer shall confirm that all items have, in fact, been filed on EMMA as required, and shall note the filing date on the Disclosure Table

## 2. Continuing Disclosure Compliance (CDC Compliance—Appendix II cont'd)

### 11. Listed Event Filings

- In addition to the continuing disclosure filings, the Disclosure Officer shall be responsible for determining whether any “listed events” have taken place
- If such an event has taken place, the Disclosure Officer must discuss the same with its external legal and financial professionals and cause the filing of notice to be made on EMMA within ten business days of such events.
- The 14 Listed Events are included on the following slide (same as earlier slide re Material Listed Events)

## 2. Continuing Disclosure Compliance (CDC Compliance—Appendix II cont'd)

- 1) Payment delinquencies
- 2) Non-payment related defaults, if material
- 3) Unscheduled draws on debt service reserves reflecting financial difficulties
- 4) Unscheduled draws on credit enhancements reflecting financial difficulties
- 5) Substitution of credit or liquidity providers, or their failure to perform
- 6) Adverse determinations with respect to the tax status of the bonds
- 7) Modifications to rights of holders, if material
- 8) Bond calls, if material, and tender offers
- 9) Defeasances
- 10) Release, substitution, or sale of property securing repayment of the securities, if material
- 11) Rating changes
- 12) Bankruptcy, insolvency, receivership or similar event of the obligated person
- 13) Merger, consolidation, or acquisition involving an obligated person, if material
- 14) Appointment of a successor or additional trustee or the change of name of a trustee, if material

## 2. Continuing Disclosure Compliance (CDC Compliance—Appendix II cont'd)

### 12. Contact Person for Investor Inquiries

The Disclosure Officer shall be the primary contact person for responding to inquiries from investors and for maintaining the investor relations portion of the Issuer's website, if any.

### 13. Voluntary Information Filing

The Disclosure Officer shall be responsible for coordinating and filing any voluntary information with EMMA, after consultation with the Issuer's legal and financial professionals.

### 3. Systematic Training of Staff and Governing Body Members

- Staff and members of the governing body must also be aware of these procedures. Accordingly, continuous training is important to teach new individuals and remind current individuals of the Issuer's continuing disclosure obligations.
- Three formats of training will aid in maintaining effective disclosure policies and procedures
  1. Annual Training
  2. Specific Training
  3. Governing Body Training

### 3. Systematic Training of Staff and Governing Body Members (Annual Training)

#### 1. Annual Training

The Disclosure Officer is responsible for scheduling annual training of Issuer employees regarding disclosure and financial reporting requirements of the federal securities laws, including:

- A complete review of:
  - The Issuer's Disclosure Policy, Rule 15c2-12 and the material events required to be reported pursuant to such Rule, and
  - The Issuer's obligations under the federal securities laws
- Within six months after each fiscal year end, the Disclosure Officer shall provide written certification to the governing body that the annual disclosure training has been completed.

### 3. Systematic Training of Staff and Governing Body Members (Annual Training)

- **Example of Certificate**

I, the undersigned, Disclosure Officer of the [Issuer Name], hereby certify that the [Issuer Name] has completed its annual disclosure training for the Fiscal Year \_\_\_\_\_, as required pursuant to the [Issuer Name]'s Policies and Procedures Regarding Municipal Securities Disclosure, adopted \_\_\_\_\_, 20\_\_.

WITNESS MY HAND this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[Individual's Name]  
[Disclosure Officer]

### 3. Systematic Training of Staff and Governing Body Members (Specific Training)

#### 2. Specific Training

When appropriate, the Disclosure Officer shall conduct (or cause to be conducted) training with individuals on those persons' specific roles and responsibilities in the disclosure and financial reporting process.

### 3. Systematic Training of Staff and Governing Body Members (Governing Body Training)

#### 3. Governing Body Training

At least biennially, the Disclosure Officer shall schedule a training session for the Issuer's governing body on:

1. Issuer's Disclosure Policy
2. Disclosure and financial reporting requirements of the federal securities laws.

### Disclosure Training Take-Aways

- Responsibilities don't end with closing
- There are ongoing, "post-issuance" requirements
  - Annual report disclosure
  - Material event disclosure
- Post-issuance compliance is taking on more significance in light of increased regulatory scrutiny
- Adopt and follow policies and procedures to comply with Federal securities disclosure laws

# Annual Training Re: Municipal Securities Disclosure

Questions?

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