



Des Moines Public Finance Group Webinar

# Municipal Securities Disclosure

2019 Annual Training

Friday, February 15, 2019



## Presenters



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## Agenda

- **Disclosure Basics**
- **Laws Governing Disclosure**
- **Amendments to Rule 15c2-12 (effective 02/27/2019)**
- **Disclosure Policies & Procedures**
- **Questions & Answers**

## Disclosure Basics

**Glossary of Terms**  
**Sample Documents**  
**Role of Counsel**

# Glossary of Terms

## Important Parties

- **Issuer** – Governmental entity that issues bonds
- **Underwriter** – Company that purchases an issue of bonds; assesses risk & price
- **Municipal Advisor** – Entity that advises issuer on municipal securities
- **SEC** – Federal Securities & Exchange Commission; enforces federal securities laws

## Documents

- **OS** – Official Statement (enables risk analysis pre-issuance)
- **CDC** – Continuing Disclosure Certificate (enables risk analysis post-issuance)
- **Dissemination Agent Agreement** – Contract between Issuer and company to post disclosure material on Electronic Municipal Market Access (“EMMA”) website, <http://emma.msrb.org>



# Official Statement (OS) Primary Offering

NEW ISSUE: DTIC BOOKEND ONLY Shaded & Part's "A"

In the opinion of Dorsey & Whitney LLP, Bond Counsel, according to present laws, rulings and decisions and existing compliance with them, the interest on the Series 2014B Bonds (including any original issue discount properly allowable in connection with the Series 2014B Bonds) will be exempt from gross income for federal income tax purposes. Interest on the Series 2014B Bonds will not be subject to the provisions of the federal alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code of 1986. This provision, however, does not relate to the federal alternative minimum tax imposed on corporations for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes) imposed on the Series 2014B Bonds or on available flow gross income for federal income tax purposes. The issuer will designate the Series 2014B Bonds as qualified for average obligations. See "TAX EXEMPTION AND RELATED TAX MATTERS" herein.

**RE FUND**

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

Date: Date of Delivery Date: At above or to be fixed

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 taxable or fully registered Bonds in the denomination of \$1,000 or any integral multiple thereof, which, when issued, will be registered in the name of CIBC & Co., as Trustee and issuer of the Depository Trust Company, New York, NY ("DTC"), will act as securities depository for the Bonds. Purchases of the Bonds will be made in book-entry form. See "THE BONDS: Bonds Entry Only System" herein.

The Bonds are being issued by the City of \_\_\_\_\_ (hereinafter the "Issuer" or "City") in the aggregate principal amount of \$1,000,000, 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 streets, water systems, sewer systems, sidewalks, and storm water drainage improvements. The Bonds are issued pursuant to the provisions of Chapters 19 and 204 of the Code of Laws, and all other laws, resolutions, ordinances and regulations, 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 on deposit in the City's Debt Service Fund and the Bond Fund created in the Resolution, and other amounts as may be lawfully available at the extent appropriated by the City Council for the purposes hereof. The Bonds do not constitute an obligation payable from a continuing annual levy of ad valorem taxes or a multiple Fund Year device or income debt or other financial obligation whatsoever of the City. The Bonds do not directly or indirectly obligate the City to make any payments hereunder during a Fund Year or any Fund Year for which bonds have been appropriated for the City. The City has no personal obligation under the Bonds other than amounts appropriated for payments due in the current Fund Year. In the event that the City Council of the City does not budget and appropriate funds for any Fund Year in an amount sufficient to pay the principal of and interest due on the Bonds during such Fund Year, the City's obligations under the Bonds shall terminate and interest will not be due on the last day of the Fund Year for which the necessary funds were appropriated. Upon the expiration of any such non-appropriation, the City shall not be obligated to make payments hereon, nor shall it be obligated to make payments on any Bonds created under the Resolution in any amount in respect of principal and interest on the Bonds beyond those amounts which are appropriated hereunder for such Fund Year, 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, charges, expenses, including but not limited to consequential, damages or expenses incurred by the holders of the Bonds as a result of the expiration by the City of the foregoing right of non-appropriation.

The Bonds involve certain uncertainties. See "BONDHOLDER RISK" 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 in full of the Payment Agent payable to the person to whom registered owners thereof are the Bonds. Any of the month immediately preceding the Interest Payment Date, on the address appearing on the registration books maintained by the Payment Agent on each other address as furnished in the Payment Agent's writing for registered owner.

The Bonds maturing on or after June 1, 2023, may be called for redemption by the Issuer and paid thereon monthly beginning June 1, 2023 or any date thereafter, from any funds regardless of source, in whole or from time to time in part, in any order of maturity and within an annual interest rate cap. The terms of redemption shall be as set forth in the Supplemental Statement of Information.

The Bonds are being offered when, as and if issued by the City and accepted by the Underwriter, subject to receipt of an opinion as to legality, validity and tax exemption from the Series 2014B Bonds by Dorsey & Whitney LLP, Tax Counsel, Dorsey & Whitney LLP, 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



# Continuing Disclosure Certificate (CDC) Continuing Disclosure

**CONTINUING DISCLOSURE CERTIFICATE**

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the City of \_\_\_\_\_ (the "Issuer"), in connection with the issuance of \$1,000,000 General Obligation Corporate Purpose Bonds, Issue 2014 (the "Bonds") dated May 15, 2014. The Bonds are being issued pursuant to a resolution of the Issuer approved on April 28, 2014 (the "Resolution"). The Issuer is executing this certificate in compliance with each material requirement set forth in the Rule, as hereinafter defined. The Issuer covenants and agrees as follows:

**Section 1. Delivery of the Disclosure Certificate.** This Disclosure Certificate is being executed and delivered by the Issuer for the benefit of the Trustee and Beneficial Owners of the Bonds and in order to assist the Participating Underwriters in complying with 5.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 1 and 4 of this Disclosure Certificate.

"Beneficial Owner" shall mean any person which (i) 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, depositaries or other intermediaries), or (ii) is treated as the owner of any Bonds for federal income tax purposes.

"Communication Agent" shall mean the Communication 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 Register.

"Local Event" shall mean any of the events listed in Section 5(d) 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, or at the date of this Disclosure Certificate, the only National Repository to the MSRB, which accepts filings to its Electronic Municipal Market Access (EMMA) system at <http://www.emma.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, in the case may be amended from time to time.

"State" shall mean the State of Iowa.

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## Role of Counsel

### Bond Counsel

- **Diligence tax qualifications** of issuer & bond offering
- **Prepare operative & closing documents** (e.g. resolutions, bonds, loan agreement, closing certificates, CDC & other closing documents)
- **Deliver opinion** that bonds are valid and legal obligations of the issuer
- **Deliver opinion** as to tax-exempt status of the bonds

### Disclosure Counsel

- **Diligence risks** associated with issuer & bond offering
- **Prepare OS** (or closely review) in conjunction with issuer
- **Review issuer's compliance** with previous CDCs in depth
- **Deliver "10b-5" opinion** to issuer (and to underwriter)
- Does not prepare or confirm financial info

## Laws Governing Disclosure

### Federal Regulatory Framework

### Antifraud Rules; SEC Rule 15c2-12

### SEC Trends

## Federal Regulatory Framework

- **Relevant Statutes**
  - Securities Act of 1933 (the “1933 Act”)
  - Securities Exchange Act of 1934 (the “1934 Act”)
- **Antifraud Rules**
  - **Issuers & underwriters:** No false statement/omission of material facts in sale/purchase of municipal securities; Rule 10b-5
  - **Municipal advisors:** No use of manipulative or deceptive device to protect client or induce client to enter securities transaction
- **SEC Rule 15c2-12**
  - Applies to underwriters; indirectly regulates issuers via contract (CDC)
  - Outlines continuing disclosure requirements for issuers

## Antifraud Rules

- No false or misleading “**statements**” of “**material**” facts, including omission of same if necessary to make statements not misleading under circumstances
- “**Statements**” includes information provided to:
  - Investors or potential investors
  - **The public** (if investors likely to overhear and rely)
- Example: City of Harrisburg, PA (May 6, 2013)
  - City charged with securities fraud after making misleading or incomplete statements to public regarding its financial condition in State of City Address, Budget, and Mid-Year Fiscal Report
  - “Statements that are reasonably expected to reach the securities markets, even if not prepared for that purpose, cannot be materially misleading.” (Statement of George S. Canellos, former Co-Director, Division of Enforcement)

## Antifraud Rules (cont'd)

- “**Material**” – objective standard developed by courts, not the Rule
  - “substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available” – *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)
  - “substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable [investor].” – *TSC Industries*, 426 U.S. at 449
  - “balancing of the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of [the issuer’s] activity.” – *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988)

## Antifraud Rules (cont'd)

### Compliance Considerations

- **Issuers have primary liability for accuracy of disclosure docs**
  - Liability for material misstatements or omissions
    - Hiring professional to prepare OS does not discharge liability
    - “Affirmative obligation” to know contents of OS
  - Personal liability: (i) governing body, (ii) employees, and (iii) officials
- **Underwriters & other professionals also liable**
  - Due diligence defense
- **Consequences of fraud allegations**
  - **Criminal** (fines & jail time)
  - **Financial** (civil fines, injunctions, damages, costs of defense)
  - **Reputational** (rating agencies, investors, lenders, public)

## SEC Rule 15c2-12

- **Two aspects of the Rule**
  - **Continuing disclosure** (ongoing disclosure)
    - **Underwriter** must determine **issuer** has agreed (usually via CDC) to provide continuing disclosure of:
      - (1) **Annual financial info** (audited financials, operating data)
      - (2) **Material event notices** (within 10 business days)
  - **Material noncompliance** (primary disclosure)
    - **Final OS** must include description of **material noncompliance** with CDC obligations in 5y before offering
- **Continuing disclosure generally not required if:**
  - Bond issue is for less than **\$1 million**
  - Bonds sold in **authorized denominations of \$100k** and either
    - Sold to no more than **35 sophisticated investors**
    - Mature within **9 months** of issuance

## SEC Rule 15c2-12 (as amended) 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 issuer
- 13) Merger, consolidation, or acquisition involving issuer, if material
- 14) Appointment of a successor or additional trustee or the change of name of a trustee, if material
- 15) Incurrence of financial obligation of issuer or agreement to covenant, event of default, remedy, priority right or similar term, if material
- 16) Default, acceleration, termination, modification or similar event under financial obligation of issuer reflecting financial difficulties

## SEC Rule 15c2-12 Material Noncompliance

- **Issuer must describe in OS material noncompliance with prior continuing disclosure obligations**
  - Reporting required if occurred in past 5 years
  - OS 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 OS:  
*“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.”*
- **Disclosure must be made, even if filings updated prior to printing the OS**



## SEC Rule 15c2-12 Material Noncompliance (cont'd)

- **Relationship to Antifraud Rules**
  - Issuer's misrepresentation of past compliance could be basis for SEC antifraud enforcement action
  - Cannot "cure" misrepresentation by subsequently amending OS
  - Silence in OS re past compliance deemed to be a statement of material compliance
- **Noncompliance based on CDC, not just Rule 15c2-12**
  - Must disclose failure to comply with obligations incurred voluntarily
  - E.g. - must report the failure to file or timely file quarterly reports if required by the CDC, even though filing not required by Rule

## SEC Rule 15c2-12 Material Noncompliance (cont'd)

- **Material Noncompliance includes:**
  - Failure to report a material event or file annual information
    - e.g. - failure to file material event notice of defeasance
    - e.g. - failure to cross-reference info timely filed elsewhere on EMMA
    - e.g. - failure to link to CUSIP of each outstanding security
    - e.g. - filing incomplete information
  - Late filing of information

## SEC Trends: Heightened Attention to Disclosure

- **Recent SEC Trends**
  - **Transitioning into active regulatory body for issuers**
    - Enforcing CDC compliance through antifraud rules
    - Rulemaking to address bank loans & direct placements
  - **Attention to increasing timeliness of disclosure**
    - Chair Clayton's remarks (December 2018)
    - MSRB discussion at board meeting (January 2019)
- **Motivating Factors**
  - **Size & complexity** of municipal market exponentially grown
  - Municipal securities **regularly traded** on secondary market
  - **Financial crisis** highlighted vulnerability of bond insurers
  - Increased use of **bank loans & direct placements**

## SEC Trends Disclosure Enforcement & MCDC

- **2013: For first time, municipal issuers were**
  - Assessed penalties; charged for violating cease and desist order
  - Charged for false OS statement of CDC compliance (*West Clark Cmty Sch.*)
  - Charged for misleading statements outside disclosure docs (*City of Miami*)
- **2014: Municipal Continuing Disclosure Cooperation Initiative (MCDC)**
  - Self-report inaccurate OS statements to receive favorable settlement terms
- **2015–16: MCDC guidance & financial penalties for employees**
  - **Issuers:** 70+ cease & desist settlements with no admission of fault; adopt policies & procedures; disclose settlement for 5 years
  - **Underwriters:** 70+ orders; aggregate fines of \$18 million (\$20k to \$500k)
  - Issuer employees fined for misleading debt service coverage table (*Westlands*)
- **2017–19: Legacy of MCDC**
  - Scrupulous research of CDC compliance to ensure proper info filed
  - Precise language regarding history of noncompliance
  - Issuer charged with negligent securities fraud for inaccurate statement of prior compliance in OS; failed to self-report in MCDC (*Beaumont Financing Authority*)

## SEC Trends Possible Future Action re Timing

### SEC Chair Clayton's December 2018 remarks:

- “The first step in improving [disclosure timeliness] is to make sure that investors understand that the financial statements they are looking at in some cases are 18 months old” (Dec. 2018 comments to Senate panel)
- “To be clear: I believe that there are potential steps that the SEC and the MSRB can take [to improve timeliness of disclosure]—*that would be wholly consistent with the words and spirit of the Tower Amendment*—to improve transparency around the age and type of financial information” (Dec. 2018 comments at SEC Conference)

## SEC Trends Case Example

### ***SEC v. Town of Ramapo, No. 16-cv-2779*** **(S.D.N.Y. decision Nov. 2018)**

- **Civil judgment against town supervisor**
  - Ordered to pay \$327,000 civil penalty
  - Permanently enjoined from municipal offerings
- **Parallel Criminal Action**
  - 30 months in prison & \$75,000 fine
  - 20 counts of conspiracy, securities fraud, & wire fraud
- **Bad Acts:**
  - Hid financial strain caused by (i) stadium construction & (ii) declining sales and property tax revenues
  - Did not disclose likely subsidy of development corporation's stadium bond payments under terms of guarantee
  - Purposely misled rating agencies about general fund balance
  - Cooked the books to show positive operating fund balances

## Amendments to Rule 15c2-12

**Background & Context**

**Event Nos. 15 & 16**

**Interpretive Guidance**

### Background & Context

- **SEC increasingly concerned with CDC compliance**
  - **2013 West Clark Community School action**
    - 1st time issuer charged with fraud for misstating past CDC compliance
  - **2014 MCDC Initiative**
    - Issuers & underwriters asked to self-report past CDC noncompliance
  - **Enforcement Actions**
    - Focus on using antifraud rules to enforce CDC compliance
- **Increased use of direct placements & bank loans**
  - SEC & some investors expressed concern re lack of disclosure
  - Voluntary disclosure initiative proposed insufficient results per SEC
  - March 2017: Proposed Rule 15c2-12 amendments published
    - Would add material events for (i) incurrence of financial obligations outside the municipal securities marketplace & (ii) events relating to those financial obligations that reflect financial difficulties

## Event Nos. 15 & 16

(15) **Incurrence** of a **financial obligation** of the obligated person, **if material**, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, **if material**;

(16) **Default**, event of acceleration, termination event, modification of terms, or other similar events under terms of a **financial obligation** of the obligated person, any of which **reflect financial difficulties**;

## Event Nos. 15 & 16 “Financial Obligation”

- **The rule defines “financial obligation” to include:**
  - i. a **debt obligation**;
  - ii. a **derivative instrument** entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or
  - iii. a **guarantee** of either (i) or (ii)
  
- **A “financial obligation” does not include**
  - i. *municipal securities for which a final official statement has been provided to the MSRB consistent with Rule 15c2-12*

## Interpretive Guidance – Event Nos. 15 & 16 “Financial Obligation”

- **“Financial obligations” intended to include:**
  - Debt, debt-like, and debt-related obligations;
  - Those obligations that could impact liquidity, overall creditworthiness, or an existing security holder’s rights
- **“Financial obligation” not intended to include:**
  - Ordinary financial and operating liabilities

## Interpretive Guidance – Event No. 15 “Debt Obligation”

- **“Debt obligation”** intended to capture short- and long-term debt obligations of an issuer under terms of indenture, loan agreement, or similar contract to be repaid over time (regardless of repayment period)
- **Includes leases** that operate as a vehicle to borrow money (i.e. capital leases)
- May be **broader than definitions** of debt under state law or accounting standards

## Interpretive Guidance – Event No. 15 “Derivative Instrument”

- **“Derivative instrument” intended to include**
  - Derivative instruments relating to existing/planned debt obligation
    - Obligation “planned” upon execution of related instrument if “reasonable person would view it likely or probable that the issuer . . . will incur the related yet-to-be-incurred debt obligation at a future date”
    - Standard likely met if “relevant derivative instrument would serve no economic purpose without the future debt obligation (regardless of whether the future debt obligation is ultimately incurred)”
  - Some instruments relating to existing/planned debt of third party (e.g. if hedges against risks of a related debt obligation)
- **“Derivative instrument does not include:**
  - Instruments designed to mitigate investment risk
- **Examples:**
  - Swap, security-based swap, futures or forward contract, option, or any combination of (or similar instrument to) the foregoing if issuer is a counterparty
  - Provided instrument related to existing/planned debt obligation

## Interpretive Guidance – Event No. 15 “Guarantee”

- **“Guarantee” captures any guarantee** of payment of a financial obligation provided by issuer (as a guarantor) for benefit of itself or a third party.
- **Two disclosures possible:**
  - One for guarantor
  - Another for beneficiary that executed the debt obligation or derivative instrument if it is material & the guarantee is a material term

## Interpretive Guidance – Event No. 15 “Material”

- **A “material” financial obligation is important to the total mix of info available to the reasonable investor**
  - Flexible, facts-and-circumstances approach
  - Little guidance as to what would meet that standard
- **Amount of financial obligation is not the only factor, making threshold tests problematic**
- **Potentially relevant factors include:**
  - (i) the source of pledged securities, (ii) priority rights, (iii) par or notional amounts, (iv) covenants, (v) events of default, (vi) remedies, & (vii) the obligated person’s overall balance sheet, bond portfolio, and existing obligations

## Interpretive Guidance – Event No. 16

- **“Modification of Terms”** interpreted to include
  - Written or verbal waiver or change to non-material terms (provided it reflects financial difficulties)
- **“Default”** interpreted to include
  - Any default that reflects financial difficulties, even if it does not qualify as an “event of default” under the terms of a transaction
  - Payment & nonpayment defaults
    - Payment default: failure to pay principal, interest or other funds due
    - Nonpayment default: failure to comply with specified covenant under terms of particular transaction



## Interpretive Guidance – Event Nos. 15 & 16 Filing Requirements

- **Material event notice to be filed within 10 business days of occurrence of event**
  - Form of notice not prescribed; at minimum should include:
    - Material terms of financial obligation (no. 15)
    - Summary of default & relevant financial difficulties (no. 16)
- **Examples of material terms to include in filing**
  - **From 2018 Release**
    - Date of incurrence, principal amount, maturity & amortization, interest rate (if fixed) or method of computation (if variable), & any default rates, depending on the circumstances (2018 Release)
  - **From MSRB Regulatory Notice 2015-03** (voluntary disclosure)
    - Source of repayment, payment dates, liquidity requirements, prepayment terms, events of acceleration, governing law, “most favored nation”-type clauses, tax status of interest, redistribution rights, & financial reporting requirements

## Disclosure Policies & Procedures

Compliance Considerations (Event Nos. 15 & 16)

Dorsey Compliance Program: Annual Training

Conclusion

## Compliance Considerations (Event Nos. 15 & 16)

### Issuers

- **Begin preparing for compliance as soon as possible**
  - Potentially broad scope of outstanding financial obligations
  - Fairly short timeframe for filing material event notices
- **Compliance to depend upon:**
  - Timely internal communication of incurrence of new obligations
  - Identifying & tracking covenants in existing obligations
  - Timely assessing materiality & recognizing financial difficulties
  - Timely preparation & filing of material event notices
- **Expect increased due diligence from underwriters**

## Compliance Considerations (Event Nos. 15 & 16)

### Underwriters

- **Revise policies & procedures**
  - Must be able to form reasonable belief issuer can comply with new CDC obligations
- **Include events 15 & 16 in CDCs**
  - May also wish to include definition of financial obligation
- **Include events 15 & 16 in descriptions of CDCs in OS**

## Dorsey Compliance Program (the “Policy”)

### Overview

- **Compliance important for both**
  - **Primary disclosure**—preparation of official statement (OS) for new bond issues
  - **Secondary disclosure**—ongoing disclosures under continuing disclosure certificate (CDC) for outstanding bond issues
- **The Policy: Three Aspects**
  - I. **New Bond Offerings**: Preparing & approving OS when issuing bonds (App’x I of Policy)
  - II. **Continuing Disclosure Compliance**: Complying with ongoing disclosure requirements under a CDC (App’x II of Policy)
  - III. **Systematic Training**: Educating key staff & elected officials regarding disclosure matters on regular basis

## I. New Bond Offerings (Preparing & Approving OS)

### Relevant Rules

- **Under Federal Antifraud Laws, the OS must not:**
  - contain any untrue statement of a material fact
  - omit to state a material fact necessary to make statements in OS not misleading under circumstances in which they were made
- **Accuracy of OS is responsibility of issuer**
  - Underwriters, municipal advisors, & lawyers may assist with preparing an OS but issuer has primary liability
  - Failing to review the OS for accuracy before publication could result in untrue statements, thereby subjecting the issuer and its employees and elected officials to liability

## I. New Bond Offerings (Preparing & Approving OS)

### 5 steps for preparing & approving OS

- **Step 1—Establish plan & schedule**
  - At outset of financing, Disclosure Officer to ensure there is (i) **a plan** for preparing OS and (ii) **a schedule** allowing sufficient time for all work, including **review & participation** by financing team & staff
- **Step 2—Manage process of preparing OS**
  - Disclosure Officer **to manage preparation process**, obtaining assistance from other participants within issuer, lawyers, and financial professionals, as necessary and appropriate
- **Step 3—Coordinate review & sign-off**
  - Disclosure Officer to develop program for **coordinating staff review of, and sign-off on**, disclosure info and documents

## I. New Bond Offerings (Preparing & Approving OS)

### 5 steps for preparing & approving OS (cont'd)

- **Step 4—Disclose any prior failures to comply**
  - Disclosure Officer to ensure OS **accurately discloses** any failure to fully comply with CDC obligations within last 5 years.
- **Step 5—Give governing body time to review**
  - Governing body must have at least **7 days to review OS** before voting on its approval (absent extenuating circumstances).
  - Elected officials on governing body must be directed to contact Disclosure Officer during review period to **discuss potential issues or comments** on the OS.

## II. Continuing Disclosure Compliance (Meeting CDC Obligations)

### Relevant Rules

- **Under SEC Rule 15c2-12, the issuer must**
  - file (or cause to be filed) necessary items under the CDC
  - in searchable electronic format (searchable pdf)
  - on EMMA (Electronic Municipal Market Access) portal ([www.mma.msrb.org](http://www.mma.msrb.org))
- **Adequate disclosure is responsibility of issuer**
  - Role of dissemination agent (if any)
  - Responsibility of issuer
  - Effects of noncompliance on pricing & marketability of bonds

## II. Continuing Disclosure Compliance (Meeting CDC Obligations)

### 13 points for meeting CDC obligations

- **Point 1—Point person for CDC compliance**
  - Disclosure Officer has primary responsibility for CDC compliance, including (i) annual filings, (ii) material event notices, (iii) voluntary filings, (iv) other filings required by CDC
- **Point 2—Understanding new CDC obligations**
  - Prior to executing CDC when issuing bonds, the issuer is to ensure it fully understands its CDC obligations by discussing them with (i) bond counsel, (ii) the underwriter, and (iii) the municipal advisor (if any)
- **Point 3—Ensuring accuracy of public statements**
  - Under antifraud rules, all public statements and releases of info regarding issuer's finances must be accurate & not misleading in all material respects (e.g. - website updates, press releases, market notices, etc.)
  - Disclosure Officer has primary responsibility; public officials also responsible
  - Applies to info that is reasonably expected to reach markets or investors

## II. Continuing Disclosure Compliance (Meeting CDC Obligations)

### 13 points for meeting CDC obligations (cont'd)

- **Point 4—Maintain list of outstanding bonds subject to CDC**
  - Disclosure Officer to compile & maintain list of all outstanding bond issues subject to a CDC, **including applicable filing dates**.
  - Info to be tracked using “Disclosure Table, Part I” of the Policy:

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

- **Point 5—Maintain copies of Disclosure Docs**
  - Disclosure Officer to assemble/maintain copies of executed CDC, final OS, and any Dissemination Agent Agreements for each applicable bond issue

## II. Continuing Disclosure Compliance (Meeting CDC Obligations)

### 13 points for meeting CDC obligations (cont'd)

- **Point 6—Document & track information to file**
  - Disclosure Officer to document and track info required to be filed and dates of filing
  - Info to be tracked using “Disclosure Table, Part II” of the Policy:

[Name of Bonds][date of issue]	Reporting Periods [inset date info was filed on EMMA]			
Description of Financial Information / Operating Data to file on EMMA	FY2013	FY2014	FY2015	FY2016
[audit]				
[list applicable tables in Official Statement]				
[unaudited financials, if audit not]				

- **Point 7—Register for filing reminders**
  - Disclosure Officer to register for CDC-filing email reminders from the “EMMA” website (<http://emma.msrb.org>)

## II. Continuing Disclosure Compliance (Meeting CDC Obligations)

### 13 points for meeting CDC obligations (cont'd)

- **Point 8—Prepare filing in advance**
  - At least 30 days before earliest deadline on Disclosure Table, Disclosure Officer to begin process of compiling info for filing
  - Coordinate with any outside professionals hired to compile this information, such as Dissemination Agent or Municipal Advisor
- **Point 9—Confirm completeness of filing**
  - At least 10 days before each filing deadline, Disclosure Officer to determine if all necessary items under CDC ready for filing
  - Coordinate with any outside professionals (as in Point 8)
- **Point 10—File the information**
  - At least 3 days before each filing deadline, Disclosure Officer to file (or confirm outside professionals filed) necessary items on EMMA
  - After filing, Disclosure Officer to confirm all items available on EMMA and note filing date on Disclosure Table

## II. Continuing Disclosure Compliance (Meeting CDC Obligations)

### 13 points for meeting CDC obligations (cont'd)

- **Point 11—Watch out for Listed Events**
  - Disclosure Officer is responsible for determining if any “Listed Events” have taken place (see next slide for 16 Listed Events)
  - If so, Disclosure Officer to discuss same with external legal & financial professionals and to cause the filing of notice on EMMA within ten business days of such Listed Events
- **Point 12—Contact person for investor inquiries**
  - Disclosure Officer is primary contact for investor inquiries and must maintain any investor-relations content on issuer’s website
- **Point 13—Point person for voluntary filings**
  - Disclosure Officer is responsible for coordinating & filing any voluntary information on EMMA after consulting with issuer’s legal & financial professionals

## II. Continuing Disclosure Compliance (Meeting CDC Obligations)

- 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 issuer
- 13) Merger, consolidation, or acquisition involving Issuer, if material
- 14) Appointment of a successor or additional trustee or the change of name of a trustee, if material
- 15) **Incurrence of financial obligation of issuer or agreement to covenant, event of default, remedy, priority right or similar term, if material**
- 16) **Default, acceleration, termination, modification or similar event under financial obligation of issuer reflecting financial difficulties**

## III. Systematic Training (Staff & Governing Body Members)

### Relevant Considerations

- **Staff & elected officials must follow procedures**
  - Regular training important
  - Educates new & existing individuals of issuer's obligations under federal securities laws & CDCs
- **Three training formats to aid in maintaining effective disclosure policies & procedures:**
  - 1) Annual Training
  - 2) Specific Training
  - 3) Governing Body Training



### III. Systematic Training (Staff & Governing Body Members)

#### 3 Training Formats

- **Training 1—Annual Training**

- Disclosure Officer to schedule annual training regarding disclosure & financial reporting requirements, including complete review of (i) issuer's Disclosure Policy, (ii) Rule 15c2-12 & its Listed Events and (iii) issuer's obligations under federal securities laws
- Disclosure Officer to provide **written certification** to governing body within 6 months after fiscal year-end that annual disclosure training has been completed by relevant employees & officials

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]

### III. Systematic Training (Staff & Governing Body Members)

#### 3 Training Formats (cont'd)

- **Training 2—Specific Training**

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

- **Training 3—Biennial Governing Body Training**

- At least biennially, Disclosure Officer to schedule training for governing body on (i) issuer's disclosure policy & (ii) disclosure & financial reporting requirements of federal securities laws

## Conclusion

- **Takeaways**

- Disclosure responsibilities do not end with closing
  - Annual report disclosure
  - Material event disclosure
- Increased SEC scrutiny of post-issuance compliance
- Importance of policies & procedures for compliance with federal securities laws

- **Prepare early for compliance with amended Rule**

- Revise or adopt policies & procedures
- Review & catalogue existing debt obligations
- Consult bond or disclosure counsel for assistance

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