

CONTINUING DISCLOSURE



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WHAT IS CONTINUING DISCLOSURE AND RULE 15C2-12?

- Rule 15c2-12 is a rule under the Securities Exchange Act of 1934 that requires dealers who underwrite municipal securities to obtain certain information about the securities and issuers.
- In addition, underwriters must make sure that the issuer makes certain information about the securities available on an ongoing basis.
- This is usually done through an agreement called the continuing disclosure agreement (CDA), which is executed at the closing of your bond issue.
- Continuing disclosure information is certain information about a municipal bond that arises after the pricing has been completed.

WHY DISCUSS CONTINUING DISCLOSURE?

- For any school district with outstanding debt, you have entered into a continuing disclosure agreement, which obligates you to file certain information on an annual basis.
- On August 20th, 2018 the Securities and Exchange Commission (“SEC”) adopted amendments which add two events that must be included in any continuing disclosure agreement.
 - These amendments became effective after February 27th, 2019.
- Regulatory bodies have brought recent enforcement actions against issuers of bonds and against staff of the issuer.
- An underwriter must have a reasonable basis for believing that your school district will comply with its continuing disclosure obligations in order to underwrite your warrants.

IS THIS REALLY IMPORTANT?

- The SEC does not have regulatory oversight of municipal issuers, however they are subject to antifraud provisions of federal securities laws.
 - Rule 10b-5 prevents issuers from making false statements or omissions of material fact with intent to deceive manipulate or defraud in connection with the sale of securities.
- Recklessness – “extreme departure from the standards of ordinary care, which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.”
- Recklessness is sufficient to establish an intent to deceive, manipulate or defraud.
- The SEC does have regulatory oversight over firms underwriting municipal issues.
- As a result, firms are barred from underwriting bonds unless issuers have contractually agreed to disclose to the MSRB's EMMA system annual financial information and material event notices as events occur.

IS THIS IMPORTANT? (THE CASE OF WEST CLARK SCHOOLS)

- West Clark Community School District (Indiana)
 - School District with 8 schools, 400 employees, 4,500 students, and a 5 member Board
 - Issued \$52 million in March 2005
 - Executed a CDA in conjunction with the issue
 - Issued \$31 million in December 2007
 - In the 2007 official statement, the District stated that it had not failed in the previous 5 years to comply with its disclosure obligations.
 - In fact, the district had not made any of its disclosure filings from 2005 to 2010.



“The School District knew, or was reckless in not knowing, that it never submitted any of the reports, notices or disclosures required by the CDA. In addition, the School District either knew, or was reckless in not knowing, that the Official Statement for the 2007 Offering, and the Certificate and Affidavit signed in connection with the 2007 Offering, contained materially false information.”

- This resulted in regulatory action against the underwriter AND the school district, with total fines in the case of approximately \$580,000.

IS THIS IMPORTANT? (THE CASE OF BEAUMONT)

The Beaumont Financing Authority, California (“BFA”)

- Beaumont is a city in California with a population of approximately 40,000.
- It is managed by 5 City Councilmen.
- The BFA is governed by the City.
- Alan Kapanicas was the City Manager of Beaumont from 1995 to 2015.
- As a part of multiple borrowings Alan Kapanicas entered into multiple CDAs on behalf of BFA.
- The BFA regularly failed to comply with the CDAs, submitting late reports and submitting reports that omitted required information.
- The BFA falsely stated that the District had complied with its CDAs.



The SEC found that Alan Kapanicas “failed to exercise reasonable care” and “reportedly either failed to read and understand the district’s CDAs or disregarded their requirements.”

- This resulted in regulatory action against the underwriter AND PERSONALLY against Alan Kapanicas who was ordered to pay \$37,500.

YOUR CONTINUING DISCLOSURE REQUIREMENTS

- Everyone's requirements will be slightly different depending on what is in your CDA. Everyone should check specific provisions in their CDA. In general you will have three different items to file:

Material Events

Within 10 Days

Your Audit

Check CDA

The Annual
Report

Check CDA

TYPES OF INFORMATION TO FILE – MATERIAL EVENT FILINGS

There are 14 enumerated material events under the Rule 15c2-12:

1. *Principal and interest 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 tax opinions, certain notices from the IRS or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security.*
7. *Modifications to rights of security 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 or issuer.*
13. *Consummation of a merger, consolidation or acquisition of, or the sale of all or substantially all of the assets of, an obligated person or issuer, other than in the ordinary course of business, or the entry into or termination of an agreement relating to such actions if other than pursuant to its terms, if material.*
14. *Appointment of a successor or additional trustee or the change in the name of a trustee, if material.*

Additionally, issuers and/or obligated persons must file a notice of failure to comply disclosing any failures to timely file their Annual Report as required by their CDA.

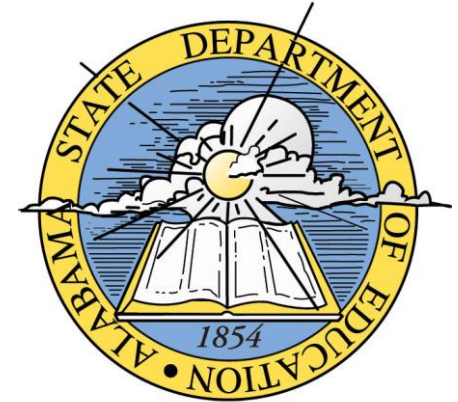
BUT WAIT THERE'S MORE...(MATERIAL EVENTS)



- On August 20, 2018 the SEC adopted amendments adding two additional events that must be included in continuing disclosure agreements.
 - Effective for all CDA's entered into after February 27, 2019.
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 the terms of a financial obligation of the obligated person, any of which reflect financial difficulties."
- Financial obligation is defined as: a debt obligation or the guarantee of a debt obligation. (Also includes derivative instruments)

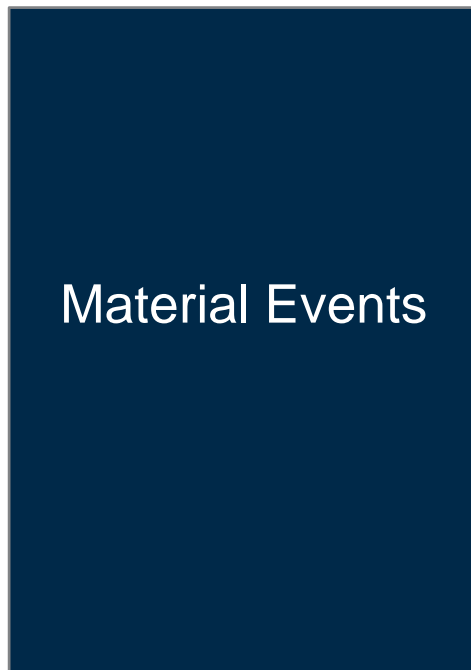
FINANCIAL OBLIGATIONS – SOME THINGS TO CONSIDER

- Bus Financings
- Energy Savings Financings
- ASDE Leveraged Funds, QSCBs, PSCA or other debt structures.
- Lease Agreements
- Bank Loans

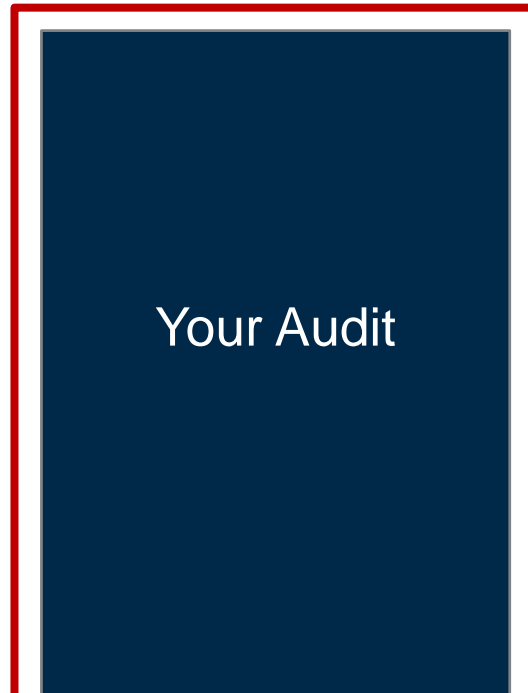


YOUR CONTINUING DISCLOSURE REQUIREMENTS

- Everyone's requirements will be slightly different depending on what is in your CDA. Everyone should check specific provisions in their CDA. In general you will have three different items to file:



Within 10 Days



Check CDA



Check CDA

THE AUDIT

- Most District's maintain annual audits.
- The only tricky part in regards to compliance with filing an audit can be the required time to file it in your CDA.
- County school districts have a lack of control over the timing of your audit. On future CDA's you should seek a more lenient time period to file your audit. (ex: 270 days)

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Your Audit

Check CDA

The Annual
Report

Check CDA

THE ANNUAL REPORT

- Generally, the CDA specifies that the Board file its audited financial statements AND certain operating/statistical data within a certain period of time after the end of your fiscal year (“Annual Report”).
 - Please check the specific requirements of your CDA – the Annual Report is **more** than merely the audit!
- If you have multiple CDA’s with different bond counsels make sure that the CDA requirements are the same on each issue.
- If possible, have your auditor insert the operating data as part of your MD&A in your audit or as a note.
 - This serves as a reminder each year and allows you to make one filing for the Audit and the Annual Report.
- Types of information required in the annual report can include, enrollment, tax collections, Board Member information, budgets, financial statements, assessed value for tax bases, etc.

A REAL LIFE EXAMPLE OF AN ANNUAL REPORT



Talladega County Schools
Leading The Way

AVERY EMBRY, CSFO

Series 2018 Official Statement

TALLADEGA COUNTY BOE'S CDA

Material Events

- Have not issued debt since 2/27/19 so CDA only contains the original 14 material events.

Within 10 Days

The Audit

- Required to file audited financial statements prepared in accordance with GAAP, must be able to derive information comparable to information in official statement.

When Available

The Annual Report

- Certain unaudited financial information.
- A statement of the Board's share of sales taxes.
- A statement on the avg. annual debt service and max debt service (payable from sales tax)

180 Days after 9/30

ANNUAL REPORT REQUIREMENTS FROM TALLADEGA CO. BOE'S CDA

Annual Report. The Board agrees, in accordance with the provisions of the Rule, to provide or cause to be provided through the Electronic Municipal Market Access ("EMMA") System established by the Municipal Securities Rulemaking Board, (i) in the case of audited financial statements referred to in clause (a) below, when available, and (ii) in all other cases, within 180 days after the close of each fiscal year of the Board commencing with the fiscal year that ended September 30, 2018, the following annual financial information and operating data (the "Annual Report"):

(a) the audited financial statements of the Board and notes thereto, prepared in accordance with generally accepted accounting principles and to include such schedules from which can be derived the financial information with respect to the Board comparable to that set forth in the Official Statement under the headings "SOURCE OF PAYMENT" and "GENERAL FINANCIAL INFORMATION";

(b) unless included in audited financial statements referred to in clause (a) above and submitted with the balance of the Annual Report, unaudited financial information with respect to the revenues and expenditures referable to the Board;

(c) a statement of the Board's share of the Special Sales Tax during such fiscal year; and

(d) a statement of the average annual debt service and maximum annual debt service with respect to indebtedness of the Board payable from proceeds of the Special Tax.

ELEMENTS OF TALLADEGA COUNTY BOE'S ANNUAL REPORT

A. Comparable information as that found in "SOURCE OF PAYMENT"

Series 2017, 2016-A,B,C, 2013A,C, 2009 Capital

Statement of the Net Proceeds of Each of the Special Taxes

Fiscal Year Ended September 30,

Source of Revenue	<u>2018</u>
3 mill countywide – Amend. No. 3; 1 mill countywide – Section 269	<u>57,701.00</u>
3 mill countywide – Amend. No. 98	<u>2,161,092.00</u>
3 mill district – Amend. No. 3	<u>2,700,876.00</u>
3 mill district – Amend. No. 252	<u>2,827,433.00</u>
3 mill district (Childersburg) – Amend. No. 382	<u>466,322.00</u>
5 mill district (Lincoln) – Amend. No. 310	<u>2,355,486.00</u>
5 mill district (Munford) – Amend. No. 310	<u>304,195.00</u>
5 mill district (Fayetteville and Fayetteville II) – Amend. No. 310	<u>168,474.00</u>
Special Sales Tax	<u>5,569,806.00</u>
County Beer Tax	<u>266,803.00</u>

A. Comparable information as that found in "GENERAL FINANCIAL INFORMATION" and revenues and expenditures of the Board.

[Link to General Financial Information](#)

TALLADEGA COUNTY BOE ANNUAL REPORT (CONT'D)

B. Unaudited financial information with respect to the revenues and expenditures of the Board.

Already filed

C. Statement of the Board's share of the special sales taxes during the fiscal year.

Series 2018-A, 2018-B, 2017, 2016-C, 2013-C
Special Sales Tax and Collections

<u>Fiscal Year Ending September 30</u>	<u>Total Collected</u>	<u>County Board Received</u>	<u>Per Cent Distributed to County Board</u>	<u>Per Cent Distributed to City Boards</u>
2018	9,190,551.00	5,569,806.00	0.6060361	0.3939639

D. Statement of Average Annual and Maximum Annual Debt Service.

Statement of the Average Annual Debt Service and Maximum Annual Debt Service with Respect to Indebtedness of the Board Payable from Proceeds of the 3 Mill Countywide Tax

Fiscal Year Ended September 30,

	<u>Series 2013-A</u>
9/30/2018	129,975.00
9/30/2019	1,159,575.00
9/30/2020	1,163,525.00
9/30/2021	642,275.00
9/30/2022	640,975.00
9/30/2023	638,750.00
9/30/2024	639,787.50
9/30/2025	643,125.00
9/30/2026	639,450.00
Total	6,297,437.50
Maximum Annual Debt Service:	1,163,525.00
Average Annual Debt Service:	699,715.28

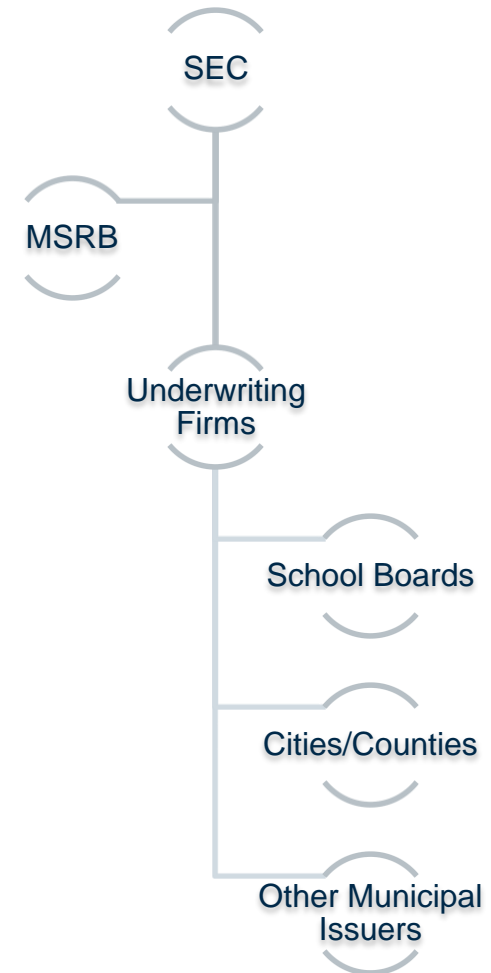
WHERE SHOULD THIS INFORMATION BE FILED? - EMMA

- EMMA or the “Electronic Municipal Market Access” is a website run by the MSRB designed to bring transparency to the market.
- EMMA is the one and only official repository for information on all municipal securities and a key way the MSRB promotes a fair and efficient municipal market. EMMA serves as a resource to help issuers:
 1. **Better evaluate your municipal financing options;**
 2. **Comply with disclosure requirements for your outstanding issues of municipal securities; and**
 3. **Communicate with investors.**
- EMMA’s contains millions of disclosure documents, including required continuing disclosures.

www.emma.msrb.org

WHAT IS THE MSRB?

- Established in 1975 to regulate the \$3.7 trillion municipal market and protect investors and state and local governments.
- The Municipal Securities Rulemaking Board (MSRB) regulates firms engaged in municipal securities as underwriters and financial advisory activities.
- The MSRB protects investors, municipal entities and the public interest by promoting a fair and efficient municipal market through:
 1. **Regulation** – qualification standards for firms and individuals, rules to help prevent fraud etc.
 2. **Transparency** – provides widespread access to market information about the municipal market by operating Electronic Municipal Market Access (EMMA).
 3. **Education** – Provides independent information and expertise about the municipal market to investors, issuers, and financial professionals.



WHAT DO I NEED TO MAKE A FILING ON EMMA?

- Online access only (no paper filings).
- The material that you want to file.
 - Audit
 - Annual Reports - consisting of Financial/Operating/Statistical Data prepared by you, the Examiners, and/or your Auditor (must be in a PDF word searchable file). *Remember that Annual Reports are more than just the audit.*
 - Material Event Notices – Contact your attorney for the proper notice language.
- CUSIP Numbers – A 9 digit code for each bond issued. CUSIPs are used to identify securities and settle trades of securities.
- MSRB Gateway login & password
 - TIN
 - Cover of the Board's last official statement.

GFOAAM'S BEST PRACTICES FOR CONTINUING DISCLOSURE

- GFOAAM = Government Finance Officers Association And Matt
- Identify who is in charge of continuing disclosure and develop internal policies and procedures to ensure timely filing.
- Schedule email reminders through EMMA for financial reporting and audit due dates.
- Frequently review the list of material events.
- Make a template of an annual report that contains all information which is required to be filed.
- Review each CDA for differences in information required in the annual report.
- Talk to your auditors about reporting requirements and timing deadlines for your audit.
- Always review the CDA (timing and information requirements) for new debt and review statements about past compliance, which are included in the POS.



SHOULD I JUST GIVE INFORMATION TO ANYONE THAT CALLS MY OFFICE?

- The practice of giving information (financials, tax collections, etc.) to certain investors but not all investors is called **SELECTIVE DISCLOSURE**.
- Applies to any non-public “material information.”
 - **Material Information** – any information that there is a substantial likelihood that it would be considered important by a reasonable investor making an investment decision.
- Providing information selectively and not uniformly can lead to disadvantages for certain investors.
- The SEC prohibits selective disclosure for corporations, however it cannot regulate municipal issuers, and therefore school districts are not bound by that rule unless it rises to the level of fraud.

BEST PRACTICE: If an investor contacts you for information, make sure that all investors and stakeholders have equal access to the same information in a timely manner, either by using the EMMA system or the making the information public on its website.

CONTINUING DISCLOSURE – A QUIZ (TRUE/FALSE)

1. I already file my budget, audits, financial records and check register on my district's website. I do not need to do anything further in regards to continuing disclosure.
FALSE
2. I just received a notice from S&P or Moody's that I was upgraded. I do not have to do anything further in regards to continuing disclosure because this is positive financial news!
FALSE
3. I just completed a bus financing. I do not have anything to complete in regards to continuing disclosure, because this is not a public bond issue.
IT DEPENDS, BUT MOST LIKELY FALSE.
4. I just hired a new firm to help me with a bond issue. They are getting ready to publish a preliminary official statement and market my debt. We have not had a conversation about my District's continuing disclosure obligations. Should I call and ask to see a draft of the continuing disclosure agreement?
TRUE
5. This discussion on continuing disclosure did not put me to sleep today.
PLEASE DO NOT ANSWER FALSE!

WHAT IS A DISCLOSURE DISSEMINATION AGENT?

- A disclosure dissemination agent is hired by municipal issuers to manage the electronic posting of all required continuing disclosure.
- A dissemination agent can fill the following roles:
 - Remind and assist in annual financial and operating filings.
 - Monitor for event filings and remind issuers about the filings.
 - Provide disclosure templates for annual filings.
 - Provide corrective action for failed filings.
- Schools in Alabama can set up reminder procedures to ensure compliance with their continuing disclosure obligations or they can hire a dissemination agent to assist with their obligations.

QUESTIONS?

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The information contained herein is solely intended to facilitate discussion of potentially applicable financing applications and is not intended to be a specific buy/sell recommendation, nor is it an official confirmation of terms. Any terms discussed herein are preliminary until confirmed in a definitive written agreement. While we believe that the outlined financial structure or marketing strategy is the best approach under the current market conditions, the market conditions at the time any proposed transaction is structured or sold may be different, which may require a different approach.

The analysis or information presented herein is based upon hypothetical projections and/or past performance that have certain limitations. No representation is made that it is accurate or complete or that any results indicated will be achieved. In no way is past performance indicative of future results. Changes to any prices, levels, or assumptions contained herein may have a material impact on results. Any estimates or assumptions contained herein represent our best judgment as of the date indicated and are subject to change without notice. Examples are merely representative and are not meant to be all-inclusive.

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Raymond James does not provide accounting, tax or legal advice; however, you should be aware that any proposed transaction could have accounting, tax, legal or other implications that should be discussed with your advisors and/or legal counsel.

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