

*Quarles & Brady* LLP



# Securities Law Considerations and Role of Disclosure Counsel

WGFOA Spring Conference

**April 25, 2019**

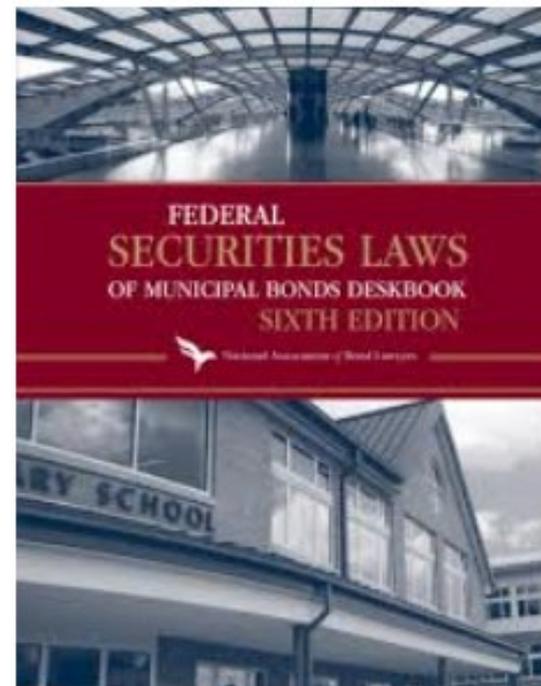
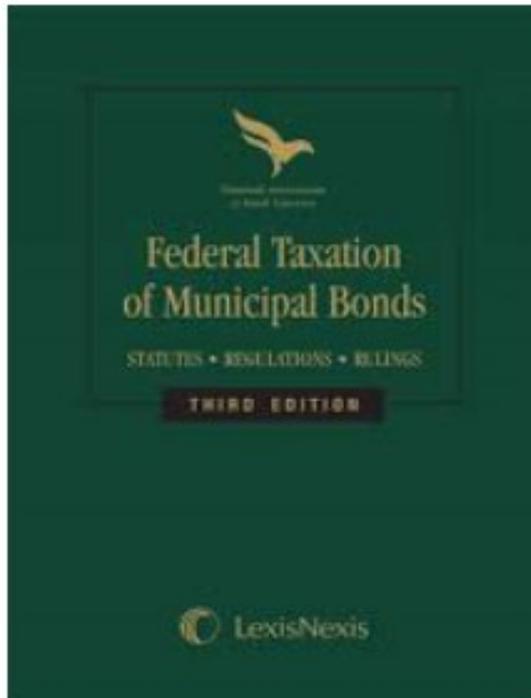
Alex Gore

# Roadmap:

- Understand basic securities law considerations
- Understand the role of primary disclosure
- Understand the role of secondary / "continuing" disclosure
- Understand nature of enforcement trends
- Understand the role of bond counsel and disclosure counsel
- Special Topic: Recent Rule 15c2-12 Amendments

Part I: Securities Law – Basic Considerations

# Securities Law – Increasingly Important



## Part I: Securities Law – Basic Considerations

# Securities Law – Increasingly Important

- Securities Act of 1933, Securities Exchange Act of 1934
- 1975 Amendments creating the Municipal Securities Rulemaking Board
- 1989 Rule 15c2-12 (Preliminary Official Statement requirement)
- 1994 Amendments to 15c2-12 (Continuing disclosure)
- 2008-09 Great Recession . . . Dodd Frank Wall Street Reform Act
- 2012 SEC Enforcement Division Office of Municipal Securities
- 2012 SEC Risk Alert
- 2014 SEC Municipal Advisor Rules
- 2014-2016 MCDC Initiatives and Resulting Fines

## Overview of Federal Securities Laws

- General
  - State and local governmental bonds are exempt from the registration requirements of the federal securities laws
  - But such bonds are subject to the “anti-fraud” rules which prohibit materially misleading statements or omissions
  - So how do the Federal Securities Laws apply to Issuers:
    - Primary Disclosure
    - Secondary (Continuing) Disclosure

# Primary Disclosure

## Part II: Primary Disclosure

# Official Statement

### FINAL OFFICIAL STATEMENT DATED AUGUST 9, 2016

**NEW ISSUE** Moody's Rated "Aaa"  
Bank Qualified (See "RATING" herein)

*In the opinion of Quarles & Brady LLP, Bond Counsel, assuming continued compliance with the requirements of the Internal Revenue Code of 1986, as amended, under existing law interest on the Notes is excludable from gross income and is not an item of tax preference for federal income tax purposes. The Notes are designated as "qualified tax-exempt obligations". See "TAX EXEMPTION" herein for a more detailed discussion of some of the federal income tax consequences of owning the Notes. The interest on the Notes is not exempt from present Wisconsin income or franchise taxes.*

**\$5,600,000**  
**WAUKESHA COUNTY AREA TECHNICAL COLLEGE DISTRICT, WISCONSIN**  
**General Obligation Promissory Notes, Series 2016B**

Dated: September 1, 2016

Due: April 1, 2017-2021

The \$5,600,000 General Obligation Promissory Notes, Series 2016B (the "Notes") will be dated September 1, 2016, and will be in the denomination of \$5,000 each or any multiple thereof. The Notes will mature serially on April 1 of the years 2017 through 2021. Interest on the Notes shall be payable commencing on April 1, 2017 and semi-annually thereafter on October 1 and April 1 of each year.

#### MATURITY SCHEDULE

(April 1)	Amount	Rate	Yield	CUSIP <sup>(1)</sup> Base 94306E
2017	\$985,000	1.00%	0.55%	PN7
2018	1,130,000	1.25	0.72	PP2
2019	1,145,000	1.25	0.85	PQ0
2020	1,160,000	1.50	0.95	PR8
2021	1,180,000	1.50	1.05	PS6

The Notes are being issued pursuant to Chapter 67 of the Wisconsin Statutes. The Notes will be general obligations of the Waukesha County Area Technical College District, Wisconsin (herein "WCTC" or the "District") for which its full faith and credit and taxing powers are pledged and which taxes may, under current law, be levied without limitation as to rate or amount. The proceeds from the sale of the Notes will be used for the public purpose of financing building remodeling and improvement projects (\$1,500,000) and for the public purpose of financing the acquisition of movable equipment (\$4,100,000).

The Notes shall not be subject to call and prior redemption. (See "REDEMPTION PROVISIONS" herein.)

The Financial Advisor to the District is: **BAIRD**

The Notes will be issued only as fully registered Notes and will be registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as the securities depository of the Notes. Individual purchases will be made in book-entry form only in denominations of \$5,000 principal amount or any integral multiple thereof. Purchasers of the Notes will not receive certificates representing their interest in the Notes purchased. (See "BOOK-ENTRY-ONLY SYSTEM" herein.)

*The District's Notes are offered when, as and if issued subject to the approval of legality by Quarles & Brady LLP, Milwaukee, Wisconsin, Bond Counsel. Quarles & Brady LLP will also act as Disclosure Counsel for the District. The anticipated settlement date for the Notes is on or about September 1, 2016.*

### BOK Financial Securities, Inc.

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Appendix A: Basic Financial Statements and Related Notes for the year ending June 30, 2016

Appendix B: Form of Continuing Disclosure Certificate

Appendix C: Form of Legal Opinion

## Official Statement – General

- The Official Statement is the "offering document" that is used to market and sell the securities
- The purpose of the Official Statement is to include the information about the securities and the issuer to permit potential investors to make an informed investment decision in securities
- The Official Statement provides a description of the securities, a variety of information about the issuer (e.g. financial information, pension/OPEB, socioeconomic and demographic data, etc.) and discusses potential risks

## Official Statement – Important Considerations

- The Official Statement is legally the issuer's document
- The securities law (including Rule 10b-5) requires that the issuer conduct due diligence to ensure that the Official Statement is accurate and complete
- From the Securities & Exchange Commission:
  - Although the Official Statement may be prepared by the underwriter or financial advisor, "the official statement is legally the issuer's document. The issuer has ultimate responsibility for the ensuring its official statements meet the disclosure standards of the securities laws and primary liability for failure to meet them."

## Official Statement – Important Considerations

- Complying with the anti-fraud rules requires Issuers to conduct satisfactory due diligence regarding the Official Statement used to sell bonds to investors
- Officials of the Issuer sign certifications attesting that the Official Statement is accurate and complete
- There is a lower standard for certain "expertized" sections
- But a higher standard for sections for which the issuer is the ultimate source of information
- The underwriter and/or financial advisor's preparation or review of the Official Statement does not eliminate or diminish the Issuer's responsibilities regarding review of the Official Statement

# Secondary / "Continuing" Disclosure

## Part III: Secondary / Continuing Disclosure

# Continuing Disclosure Agreement

- Issuer's agreement to provide information for the life of the bonds

### CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the Waukesha County Area Technical College District, Wisconsin (the "Issuer") in connection with the issuance of \$3,850,000 General Obligation Promissory Notes, Series 2017B, dated August 28, 2017 (the "Securities"). The Securities are being issued pursuant to resolutions adopted on July 10, 2017 and August 8, 2017 (collectively, the "Resolution") and delivered to BOK Financial Securities, Inc. (the "Purchaser") on the date hereof. Pursuant to the Resolution, the Issuer has covenanted and agreed to provide continuing disclosure of certain financial information and operating data and timely notices of the occurrence of certain events. In addition, the Issuer hereby specifically covenants and agrees as follows:

**Section 1(a). Purpose of the Disclosure Certificate.** This Disclosure Certificate is being executed and delivered by the Issuer for the benefit of the holders of the Securities in order to assist the Participating Underwriters within the meaning of the Rule (defined herein) in complying with SEC Rule 15c2-12(b)(5). References in this Disclosure Certificate to holders of the Securities shall include the beneficial owners of the Securities. This Disclosure Certificate constitutes the written Undertaking required by the Rule.

**Section 1(b). Filing Requirements.** Any filing under this Disclosure Certificate must be made solely by transmitting such filing to the MSRB (defined herein) through the Electronic Municipal Market Access ("EMMA") System at [www.emma.msrb.org](http://www.emma.msrb.org) in the format prescribed by the MSRB. All documents provided to the MSRB shall be accompanied by the identifying information prescribed by the MSRB.

**Section 2. Definitions.** In addition to the defined terms 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" means any annual report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"Audited Financial Statements" means the Issuer's annual financial statements, which are currently prepared in accordance with generally accepted accounting principles (GAAP) for governmental units as prescribed by the Governmental Accounting Standards Board (GASB) and which the Issuer intends to continue to prepare in substantially the same form.

"Final Official Statement" means the Final Official Statement dated August 8, 2017 delivered in connection with the Securities, which is available from the MSRB.

"Fiscal Year" means the fiscal year of the Issuer.

"Governing Body" means the District Board of the Issuer or such other body as may hereafter be the chief legislative body of the Issuer.

"Issuer" means the Waukesha County Area Technical College District, Wisconsin, which is the obligated person with respect to the Securities.

## Part III: Secondary / Continuing Disclosure

# Continuing Disclosure Agreement

- Issuer's agreement to provide information for the life of the bonds

"Issuer Contact" means the Vice President-Finance of the Issuer who can be contacted at College Center Building, Room C213, 800 Main Street, Pewaukee, Wisconsin 53072, phone (262) 691-5566, fax (262) 691-5593.

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

"MSRB" means the Municipal Securities Rulemaking Board.

"Participating Underwriter" means any of the original underwriter(s) of the Securities (including the Purchaser) required to comply with the Rule in connection with the offering of the Securities.

"Rule" means SEC Rule 15c2-12(b)(5) promulgated by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time, and official interpretations thereof.

"SEC" means the Securities and Exchange Commission.

### Section 3. Provision of Annual Report and Audited Financial Statements.

(a) The Issuer shall, not later than 270 days after the end of the Fiscal Year, commencing with the year ended June 30, 2017, provide the MSRB with an Annual Report filed in accordance with Section 1(b) of this Disclosure Certificate and which is consistent with the requirements of Section 4 of this Disclosure Certificate. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that the Audited Financial Statements of the Issuer may be submitted separately from the balance of the Annual Report and that, if Audited Financial Statements are not available within 270 days after the end of the Fiscal Year, unaudited financial information will be provided, and Audited Financial Statements will be submitted to the MSRB when and if available.

(b) If the Issuer is unable or fails to provide to the MSRB an Annual Report by the date required in subsection (a), the Issuer shall send in a timely manner a notice of that fact to the MSRB in the format prescribed by the MSRB, as described in Section 1(b) of this Disclosure Certificate.

Section 4. Content of Annual Report. The Issuer's Annual Report shall contain or incorporate by reference the Audited Financial Statements, adopted annual budget and/or current general fund budget summary and updates of the following sections of the Final Official Statement to the extent such financial information and operating data are not included in the Audited Financial Statements:

1. TAX LEVIES, RATES AND COLLECTIONS
2. ASSESSED AND EQUALIZED VALUATIONS
3. INDEBTEDNESS OF THE DISTRICT - Direct Indebtedness

### Section 5. Reporting of Listed Events.

(a) This Section 5 shall govern the giving of notices of the occurrence of any of the following events with respect to the Securities:

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, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Securities, or other material events affecting the tax status of the Securities;
7. Modification to rights of holders of the Securities, if material;
8. Securities 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. The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

## Continuing Disclosure Agreement

- Municipal bonds and notes are subject to SEC Rule 15c2-12, which regulates the timing and production of disclosure documents by brokers, dealers and underwriters of municipal securities
- SEC Rule 15c2-12 requires continuing disclosure agreements to be entered into by most issuers of municipal bonds and notes to provide annual reports and notices of "material events"
- Antifraud rules apply in the case of continuing disclosure filings
- Failure to comply with continuing disclosure obligations must be disclosed in subsequent Official Statements
  - Heightened SEC scrutiny on this (MCDC Initiative)

# Enforcement Trends

## Securities Law – Increasingly Important

- Securities Act of 1933, Securities Exchange Act of 1934
- 1975 Amendments creating the Municipal Securities Rulemaking Board
- 1989 Rule 15c2-12 (Preliminary Official Statement requirement)
- 1994 Amendments to 15c2-12 (Continuing disclosure)
- 2008-09 Great Recession . . . **Dodd Frank Wall Street Reform Act...**
- **2012 SEC Enforcement Division Office of Municipal Securities**
- **2012 SEC Risk Alert**
- **2014 SEC Municipal Advisor Rules**
- **2015 MCDC Initiatives and Resulting Fines**

## Securities Law – 2012 Risk Alert

- **2012 SEC Publishes National Examination Risk Alert: *Strengthening Practices of the Underwriting of Municipal Securities***
  - It endorses industry guidance (GFOA, NFMA), urges the use of checklists and due diligence calls, and describes levels of responsibility for due diligence
- **Recent SEC examination priority releases indicate that the SEC will focus on a variety of subjects including:**
  - stale financial statements;
  - offering documents that do not reflect changes in conditions;
  - undisclosed conflicts of interest;
  - misuse of bond proceeds;
  - municipal asset valuation (e.g., pension/OPEB);
  - "pay to play" violations;
  - municipal bankruptcy statutory frameworks;
  - bank purchases and related "municipal securities" analysis

## Securities Law – Significant Increase in Enforcement Actions

- Martha Haines, former SEC Office of Municipal Securities chief:
  - "Issuer officials who approve the issuance of bonds and/or the form of disclosure document should be aware that they have personal responsibilities under the securities laws. For example, a public official who approves the issuance of securities and use of a disclosure document may not authorize disclosure that the public official knows to be materially false and misleading; nor may that public official authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading. Of course, municipal officials can rely on experts, lawyers and financial advisors - just as officials in public companies do. However, that reliance must be *reasonable*. Officials who hide their head in the sand are not protected from potential liability."

## Securities Law – Significant Increase in Enforcement Actions

- Andrew Ceresney, SEC Enforcement Director, speaking in 2016:
  - "The Commission is bringing actions against more municipal issuers and public officials. For example, since the beginning of 2013, the Commission has brought enforcement actions against 76 state or local government entities...and 16 public officials. In contrast, for the entire 10 year period from 2002 to 2012, there were enforcement actions against 6 government entities and 12 public officials...*the most effective deterrent is individual liability*"

## Part IV: Enforcement Trends

# Transparency - EMMA

- EMMA = Electronic Municipal Market Access Dataport

### Issue Details

WAUKESHA COUNTY AREA TECHNICAL COLLEGE DISTRICT WISCONSIN GENERAL OBLIGATION  
PROMISSORY NOTES SERIES 2011A (WI)

WAUKESHA CNTY WIS AREA TECH COLLEGE DIST PROM NTS-SER A (WI)\*

Dated Date: 05/03/2011

Underwriting Spread Amount: Not Disclosed - Competitive Sale

Closing Date: 05/03/2011

→ View issuer homepage: WAUKESHA CNTY WIS AREA TECH COLLEGE DIST | → See other issues by this issuer

Final Scale   Official Statement   **Continuing Disclosure**   Trade Activity

View continuing disclosure or advance refunding document, which provides important information about the security after initial issuance.

### FINANCIAL INFORMATION & DOCUMENTS

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**Most Recent** FY 18 Adopted Budget for the year ended 06/30/2018 posted 06/14/2017 (7.3 MB) [details](#)

#### Audited Financial Statements or CAFR

[FY 16 Approved CAFR for the year ended 06/30/2016 posted 01/11/2017 \(6.1 MB\)](#) [details](#)  
[2014/15 CAFR for the year ended 06/30/2015 posted 11/12/2015 \(24.4 MB\)](#) [details](#)  
[2013/14 CAFR for the year ended 06/30/2014 posted 11/18/2014 \(62.7 MB\)](#) [details](#)  
[2012/13 CAFR for the year ended 06/30/2013 posted 11/13/2013 \(4.9 MB\)](#) [details](#)  
[2011/12 Comprehensive Annual Financial Report \(CAFR\) for the year ended 06/30/2012 posted 11/20/2012 \(12.9 MB\)](#) [details](#)  
[FY 11 Official CAFR for the year ended 06/30/2011 posted 11/16/2011 \(8 MB\)](#) [details](#)

#### Budget

[FY 18 Adopted Budget for the year ended 06/30/2018 posted 06/14/2017 \(7.3 MB\)](#) [details](#)  
[2016/17 Adopted Budget for the year ended 06/30/2017 posted 06/21/2016 \(19.4 MB\)](#) [details](#)  
[2015/16 Adopted Budget for the year ended 06/30/2016 posted 06/12/2015 \(6.5 MB\)](#) [details](#)  
[FY 15 Adopted Budget for the year ended 06/30/2015 posted 06/11/2014 \(23.6 MB\)](#) [details](#)  
[2013/14 Adopted Budget for the year ended 06/30/2014 posted 06/12/2013 \(27.3 MB\)](#) [details](#)  
[2012/13 Adopted Budget for the year ended 06/30/2013 posted 06/13/2012 \(6.9 MB\)](#) [details](#)  
[FY 12 Adopted Budget for the year ended 06/30/2012 posted 06/15/2011 \(7.6 MB\)](#) [details](#)

### EVENT NOTICES

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**Most Recent** Cusip linkage dated 08/08/2016 posted 08/08/2016 (38 KB) [details](#)

## Enforcement Against Individual Entities & Officials

- Recent Years = Unprecedented Number of Enforcement Actions
  - City of Harrisburg (misleading budget report in mayor's public address)
  - City of Allen Park (control person liability)
  - City of Harvey and its Comptroller (enjoined offering of bonds)
  - State of Illinois (inadequate pension liability disclosure)
  - Town of Ramapo and Town officials (criminal charges)
  - Beaumont Financing Authority (failure to provide continuing disclosure)
  - College of New Rochelle (former controller made fraudulent statements in audits)

## **Broad-Based / Systematic Enforcement**

- Municipalities Continuing Disclosure Cooperation ("MCDC") Initiative
  - Subject matter: inaccurate Official Statement statements regarding past compliance with continuing disclosure obligations
  - Actions against 72 municipal underwriting firms (96% of the market)
  - Actions against 71 issuers including at least one in each State

# Bond Counsel

## Function

- Assist the issuer in meeting its legal obligations to issue debt
- Bodies of law considered include primarily state law and federal tax law
- Assists in the planning stages of an issuance to consider issues like reimbursement, project eligibility, and tax exemption eligibility
- Prepares resolutions adopted by the governing body
- Prepares closing documents signed by issuer officials
- Prepares a transcript of proceedings with the legal documents used in connection with the debt issuance

## History and Opinion

- A bond counsel opinion is a requirement in the municipal bond market since the late 19<sup>th</sup> century
- Conduct tax law due diligence for tax-exempt obligations and state law diligence for validity and enforceability
- Provides a legal opinion that the debt was validly issued and that the interest is tax-exempt (if applicable)
- Bond Counsel's engagement does not include any due diligence review of or opinion on the Official Statement

# Disclosure Counsel

## Function

- Assist the issuer in meeting its legal obligations in primary offerings
  - i.e., assist the issuer in conducting due diligence with respect to the Official Statement
  - i.e., other words, protect the issuer vis-a-vis securities law concerns

## Process

- Build a due diligence file of supporting backup materials
- Conduct due diligence with respect to the Official Statement
- Conduct a due diligence call
- Provide a "10b-5 opinion"

## Building a Due Diligence File

- Materials from issuer website
- Audited financial statements
- Actuarial studies
- U.S. Bureau
- Department of Revenue
- Employer databases
- Responses from local municipalities
- Litigation searches
- News searches

## Conduct Due Diligence – the Official Statement

- 2012 SEC Risk Alert sets forth guidance
- Disclosure Counsel due diligence consists of reviewing the Official Statement against the due diligence file:
  - e.g., review financial representations and tables against the audit
  - e.g., review unfunded liability statements against actuarial reports
  - e.g., review litigation dockets and media results against applicable Official Statement sections
  - e.g., review continuing disclosure compliance statements against EMMA filings

## Conduct Due Diligence Conference Call

- Regulatory guidance endorses use of due diligence checklists and questionnaires
- The diligence call also facilitates an in-depth discussion of the Official Statement
- The questionnaire memorializes the issuer's due diligence and would help rebut any claim of negligence
- The conference call shows that the process was more than a paperwork exercise

## 10b-5 Opinion

- Upon closing, disclosure counsel delivers a "10b-5" opinion letter to the issuer
- Rule 10b-5 is one of the "anti-fraud" provisions of the Federal securities laws
- Rule 10b-5 makes it unlawful, in connection with the purchase or sale of any security, to make any untrue statement of a material fact or to omit to state a material fact
- The "10b-5" opinion letter is another way to evidence the issuer's careful review and diligence with respect to the Official Statement

## Use of Disclosure Counsel – SEC Statements

- The SEC has long indicated in speeches and enforcement actions a preference for issuers to use disclosure counsel
- In an enforcement action against the City of San Diego, the SEC recognized the city's hiring of new disclosure counsel for all of its future offerings to have "better and more continuous knowledge of the City's financial affairs" as an important remedial measure the City had taken
- Martha Haines, the former chief of the SEC's Office of Municipal Securities, said in a speech to a state's municipal finance officers association:
  - *"Municipal bond issuers have primary responsibility for disclosure. As a result, it is important that they use experienced, qualified attorneys...who are familiar with the securities laws on their transactions...**Many issuers are unaware that bond counsel's role does not automatically include overall disclosure responsibilities on the issuer's behalf. You may wish to add it to the scope of bond counsel's engagement or hire separate disclosure counsel.**"*

## Use of Disclosure Counsel – Industry Statements

- The GFOA recommends that in allocation responsibilities for preparing the Official Statement:
  - "If a government does not have sufficient in-house expertise or is an infrequent issuer of debt, it needs to engage outside professionals to assist with the debt issue."
- The League of Cities in California has stated that:
  - "Issuers and their officers can best protect themselves by [among other actions] engaging competent disclosure counsel and following industry standards for disclosure in connection with new issues."

## Additional Considerations

- The “anti-fraud” rules prohibiting material misstatements and omissions applies not only to offering documents, but also to other statements that are “reasonably expected to reach investors and the trading markets”
  - Continuing Disclosure Filings
  - Issuer Website
  - Audited Financial Statements
  - Other Statements
    - Press Releases
    - Media Interviews
    - Elected Official Speeches

## Part V: Disclosure Counsel

### Best Practices to Consider

- Developing a general disclosure policy may help (1) reduce chance of making material misstatements or omissions; and (2) establish a reasonableness defense for any such errors
- Recent National Association of Bond Lawyer guidance suggests such a policy should include:
  - (1) description of type of disclosures covered;
  - (2) statement of process by which (and by whom) such disclosures will be drafted, reviewed, approved and documented;
  - (3) adequate supervision and disbursement of responsibilities; and
  - (4) provision for training of officials and employees
- Include duties related to bond financing and post-issuance compliance in job descriptions
- Periodic training of officials responsible for compliance
  - GFOA Publications (<http://www.gfoa.org/>)
  - EMMA training (<http://emma.msrb.org/EmmaHelp/EmmaHelp.aspx>)

# Recent Rule 15c2-12 (Continuing Disclosure) Amendments

## Rule 15c2-12 Amendments

- Effective for continuing disclosure agreements entered into on or after February 27, 2019, there are two additional "material events" that require disclosure within 10 business days:
- (15) Incurrence of a **financial obligation**, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation, 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, any of which reflect financial difficulties

## Financial Obligation

- "a (i) debt obligation, (ii) derivative instrument entered into in connection with, or pledged as security or source of payment for, an existing or planned debt obligation, or (iii) guarantee of (i) or (ii)"
- Excludes municipal securities for which a final official statement has been provided to the Municipal Securities Rulemaking Board (i.e. filed on EMMA)
- Debt obligations include anything that is "debt-like" including leases that operate as a vehicle for borrowing money, whether or not the obligation would be "debt" under state law
- Notices filed for event 15 should include a description of the material terms of the financial obligation, which may be either in summary form or filing the actual financial obligation agreement/term sheet (with appropriate redactions)

## Why Does This Matter?

- Any failures to make required continuing disclosure filings must be disclosed in subsequent official statements
- In order to buy the securities, the underwriter must have a reasonable basis to conclude that the issuer will comply with its continuing disclosure responsibilities – repeated failure to make required filings may make this determination difficult
- The underwriter may ask the issuer to explain what procedures it has in place to monitor and comply with the new material events

## Best Practices to Consider

- If you have existing continuing disclosure policies or procedures that list the material events, have them updated to add the new events
- Consider internal procedures to monitor incurrence and reporting of financial obligations
- GFOA Member Alert discusses steps for issuers to take:  
<http://www.gfoa.org/new-amendments-sec-rule-15c2-12-new-event-notice-related-material-financial-obligations-and-events>

**Questions?**

# Disclaimer

This document provides information of a general nature. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations or issues. Additional facts and information or future developments may affect the subjects addressed in this document. You should consult with a lawyer about your particular circumstances before acting on any of this information because it may not be applicable to you or your situation.