

## **Guest Article: Continuing Disclosure—Practical Tips for Effective Compliance**

*[Editor's Note: From time to time, we publish guest articles that we think inform readers on topics of interest. The article below by Jonathan Edwards, Certified Independent Public Finance Advisor of Government Financial Strategies, Inc., certainly meets this description. Necessarily, the views and opinions of the authors are their own, but we think the article below is interesting and informative.]*

On August 23, 2013, *The Fiscal Report* published an informative guest article on the topic of continuing disclosure titled *The Securities Exchange Commission's Probe Into Bond Disclosure Compliance Puts Bond Issuers on Alert* authored by Vicenti, Lloyd, and Stutzman (VLS). We appreciate VLS for authoring this article and School Services of California for publishing it, so that school districts are further educated about this important obligation.

Adding to this article, below is information regarding where an issuer can find its continuing disclosure obligations for any given bond issue, how to self-check the status of continuing disclosure reporting, and issues to be aware of when outside entities are preparing and filing the required reports.

### **Where to Find the Continuing Disclosure Obligation**

In our experience with school districts in California, the document setting for the continuing disclosure requirements is typically titled "Continuing Disclosure Certificate" and is included in the transcript for the financing. If an issuer does not have quick access to the transcript, a form of the continuing disclosure certificate is typically included with the appendices of the official statement.

The continuing disclosure certificate will not only state what documents must be filed and by when, but it will also require that, regardless of the deadline for the annual report, the issuer notify the market upon the occurrence of certain significant events, such as a rating change. Thus, there are two elements to continuing disclosure: annual continuing disclosure reporting by the filing deadline and ongoing significant event reporting as needed.

### **How to Self-Check Continuing Disclosure and Significant Events Disclosure**

An issuer can self-check the reporting status for any given bond issue at <http://www.emma.msrb.org>. EMMA (Electronic Municipal Market Access) has been the single point official source for municipal disclosures and market data since 2009 and contains information for municipal bonds issued since 1990.

On this site, an issuer can search its name and then see links to each of its bond issues. Within each bond issue is a tab for "continuing disclosure," which shows the information that has been filed. This can be compared to the list of required annual reporting information and the list of significant events set forth in the continuing disclosure certificate.

[Click here](#) for an example of the links to each bond issue for the Visalia Unified School District.

Checking the status of significant events disclosure reporting may be more challenging because it is possible that a significant event, such as a bond insurer rating change, may not have come to the issuer's attention.

## **Issues to Be Aware of When Outside Entities Are Preparing and Filing the Required Reports**

Many issuers have their continuing disclosure reports prepared and filed by outside entities. Below are some issues to be mindful of:

### Outside Entity Reporting Does Not Guarantee Compliance

Having continuing disclosure reports prepared by an outside entity, even one that appears or professes to be experienced in municipal finance, does not guarantee that the filing will be done properly. We have seen many instances where a school district believed their reporting was current because a consultant had been retained, but we subsequently discovered that reports were missing and/or incomplete.

The problem is exacerbated by the fact that an issuer using an outside entity can be lulled into a false sense of security and not discover the inadequate reporting until many years down the line, by which time the chances of resulting additional problems have grown and the remedy work required is much more. For example, as in the West Clark Community Schools [1] case referenced in the previous article, a district may, pursuant to issuing a new bond, certify in writing that its continuing disclosure obligations have been met, when in fact that is not the case.

### The Cost of Outside Entity Services Should Be Understood and There Is No Free Lunch

In our experience, the time required to prepare and file a continuing disclosure report is typically no more than 2 to 4 hours per issue. Further, for reporting multiple bond issues, there are often economies of scale making it more likely that the time required is at the lower end of the range, particularly if the issues are related, such as multiple general obligation bond issues from the same election. Therefore, for example, the cost for a single bond issue may be \$300 to \$600 and the cost for five issues may be \$1,200 to \$2,400. There can also be expenses for data provided by data collection services.

Finally, there are many financial firms that provide continuing disclosure services for "free" after they have worked on and been compensated for the issuance of the bonds. Assuming nothing in life is truly free, the accurate paradigm is that the cost was essentially built into the compensation previously paid.

Again, thank you to VLS and School Services of California for their very valuable and timely reporting on this topic.

Questions about this article may be directed to Jonathan Edwards at (916) 444-5100.

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[1] Interestingly, as a result of the SEC's investigation, the underwriter was also charged with providing other issuers with improper gifts and gratuities and then treating those expenses as costs of issuance such as "miscellaneous" costs or costs related to "printing, preparation, and distribution of official statement." The gifts included: a \$2,500 donation to a charity favored by an issuer; a \$1,500 donation to an educational scholarship favored by an issuer; \$1,000 to sponsor a golf outing sponsored by an issuer; \$2,500 to sponsor an education foundation hosted by an issuer involving members of the Colts football team; 12 Chicago White Sox tickets; and travel, hotel, and entertainment expenses for issuers.