

**THE SECURITIES LAW THREAT TO
MUNICIPAL BOND ISSUERS AND THEIR
PUBLIC OFFICIALS
AND
HOW YOU CAN DEAL WITH IT**

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THE SECURITIES LAW THREAT

Municipal Issuers and their Officials are back in the SEC Enforcement Spotlight.

Six enforcement actions, a rare Commission 21(a) report, and a key speech by an influential SEC Commissioner – all in 2013 – signal a renewed enforcement drive on bad disclosure targeting issuer and their officials.

THE SECURITIES LAW THREAT

The issuers pursued by the SEC range from one of our largest States to a Community School District, governed by a five member School Board, employing 400 staff at eight different schools and teaching approximately 4,500 students.

No “pass” is given to small, unsophisticated issuers.

THE SECURITIES LAW THREAT – THE ENFORCEMENT ACTIONS

State of Illinois:

Cause: materially misleading disclosure regarding its pension system and resulting risk to State's financial condition. SEC states misleading disclosure a result of various institutional failures, including:

- Failure to adopt or implement sufficient controls, policies, and procedures for preparation and dissemination of disclosure;
- Failure to adequately train personnel involved in the disclosure process;
- Failure to retain disclosure counsel.

THE SECURITIES LAW THREAT – THE ENFORCEMENT ACTIONS

City of Harrisburg, PA:

Cause: material misrepresentations and omissions in its 2007 and 2008 CAFRs, 2009 Budget and Transmittal Letter, 2009 State of the City Address and its Mid-Year Fiscal Report for 2009, as to City's credit ratings and the potential impact of the RRF debt on the City's financial health. SEC cites as violations of Section 10(b) and Rule 10b-5 antifraud provisions.

- First time SEC has charged a municipality for misleading statements made outside of its securities disclosure documents.

THE SECURITIES LAW THREAT – THE ENFORCEMENT ACTIONS

City of Miami, FL and Michael Boudreax

Federal court action against the City and its former Budget Director charging securities fraud in connection with multiple bond offerings and CAFR disclosures as well as violation of an existing SEC cease and desist order.

Cause: alleged violations include materially false and misleading statements and omissions concerning certain interfund transfers to mask the increasing deficits in the City's General Fund.

SEC seeks financial penalties against both the City and the Budget Director as well as injunction and order to comply with existing SEC Order.

THE SECURITIES LAW THREAT – THE ENFORCEMENT ACTIONS

City of Victorville CA:

Federal court action in California against the City, a City official, the Southern California Logistics Airport Authority, and the underwriter of the Airport Authority's bonds.

Cause: alleged violations of antifraud provisions and MSRB rules, and seeking disgorgement of ill-gotten gains plus civil penalties against the parties for alleged false and misleading statements including inflated valuations in the Airport Authority's bond offering as well as the underwriter's misuse of more than \$2.7 million of bond proceeds to keep itself afloat.

THE SECURITIES LAW THREAT – THE ENFORCEMENT ACTIONS

City of South Miami, FL:

Settles SEC charges of defrauding bond investors about the tax-exempt eligibility of mixed-use retail and parking facility.

- Cause: City failed to disclose it jeopardized tax-exempt status of two bond issues by impermissibly loaning proceeds from the first issue to a private developer and restructuring a lease agreement prior to the second offering.
- Cost: City required to retain independent consultant to review the city's disclosure policies, procedures, and practices for next three years and implement all recommendations . Cost includes expense of defending investigation.

THE SECURITIES LAW THREAT – THE ENFORCEMENT ACTIONS

Common theme:

- Inadequate or non-existent disclosure policies, procedures and practices that result in violation of antifraud provisions of federal securities laws.
- Required remedy: adoption and implementation of formal disclosure policies, procedures and practices, combined with annual training and use of disclosure counsel taken into account in reducing charges and penalties sought by SEC in enforcement actions, as well as mandatory use of a consultant over multiple years.

THE SECURITIES LAW THREAT – THE ENFORCEMENT ACTIONS

What's New Here?

- First time that the SEC has charged a municipality with falsely stating to bond investors that it had been properly providing annual financial information and notices required as part of its prior bond offerings (i.e. 15c2-12 compliance).
- First time that the SEC has charged a municipality for misleading statements made *outside* of its securities disclosure documents.
- 21(a) Report alerting issuer officials that *they* will be charged when their public statements in the secondary market regarding municipal securities are misleading.

THE SECURITIES LAW THREAT – TAKE-AWAYS

- **SEC Commissioner Gallagher:** “Although cities and municipal issuers are distinct legal entities, in fact they act through individuals. And they meet their primary and continuing disclosure obligations under state and federal law through the conduct of public officials. When we find material misstatements or omissions by public officials in connection with municipal securities, we can, should, and will take action to hold the appropriate public officials accountable.”
- SEC Policy now to charge individuals as well as the issuer.
- Small issuers are not immune.

HOW TO DEAL WITH IT

*So what can an Issuer do to protect itself and its Officials
from SEC charges of fraud in its disclosure?*

HOW TO DEAL WITH IT

The SEC has been remarkably consistent over an extended period of time with its answer.

Its answer is a condition of settlement in its proceedings.

It is an effective defense against securities fraud charges as, properly done, it negates a necessary element of a fraud claim.

HOW TO DEAL WITH IT

The SEC's answer has been and continues to be:

*Adopt and Implement Comprehensive Disclosure
Policies and Procedures*

HOW TO DEAL WITH IT –

OK, SO WHAT DOES THAT MEAN?

*Enable Approving Body to approve
disclosure based on effective procedures*

*Disclosure
Preparation and
Presentation by
Disclosure
Working Group
through effective disclosure
policies and procedures*

DISCLOSURE POLICIES AND PROCEDURES

KEY ELEMENTS

Disclosure Preparation and Presentation by Disclosure Working Group through effective disclosure policies and procedures includes, in SEC enforcement view:

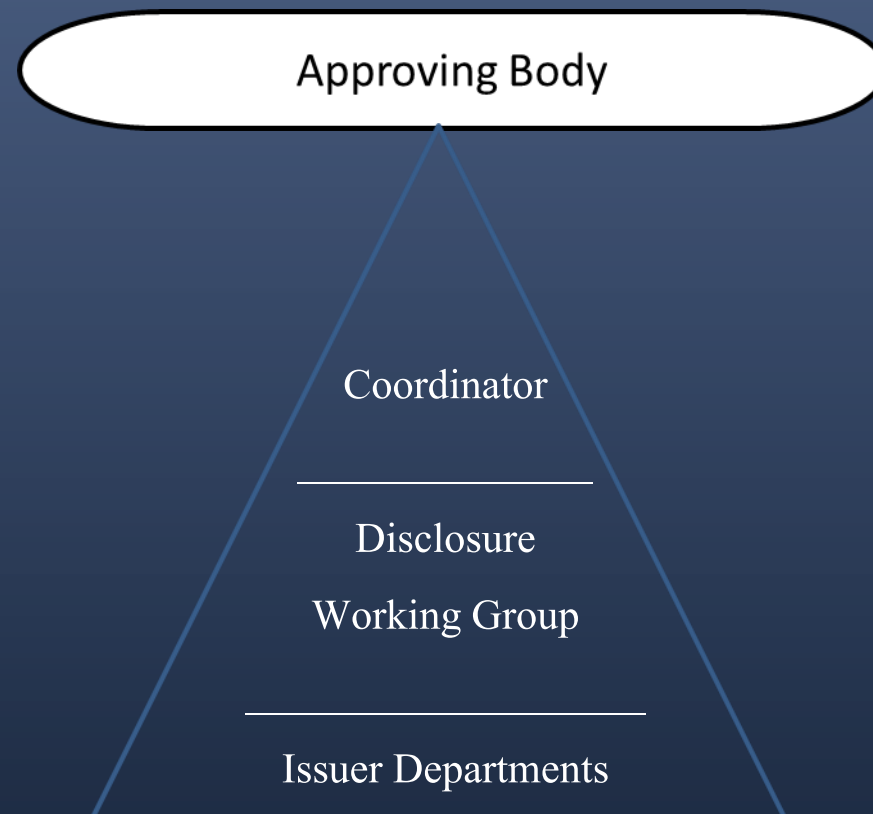
1. written policies and procedures that, at a minimum:
 - o clearly identify who is responsible for what;
 - o clearly state the process by which the disclosure is drafted and reviewed; and
 - o provide checks and balances so there is adequate supervision and reasonable disbursement of responsibilities avoiding placement of too much power and information with just one person

DISCLOSURE POLICIES AND PROCEDURES

KEY ELEMENTS

2. training for officials and employees on applicable disclosure requirements of the federal securities laws and GASB financial reporting provisions including:
 - o practical training on disclosure and financial reporting requirements of the federal securities laws and GASB;
 - o specific training on each person's role and responsibilities in the disclosure and financial reporting process; and
 - o training everyone involved in the disclosure process—from the city council members to the staff members involved in the initial drafting of the disclosure documents.

HOW TO DEAL WITH IT – BASIC STRUCTURE



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THANK YOU!

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