

Florida School Finance Officers Association



2015 Fall Conference

Updating Debt Policies and Procedures including Disclosure Requirements

Presented by:

Lisa Olsen
Senior Vice President
Digital Assurance Certification
lolsen@dacbond.com

2:30 pm – 3:20 pm
Wyndham Lake Buena Vista Resort, Florida
November 12, 2015

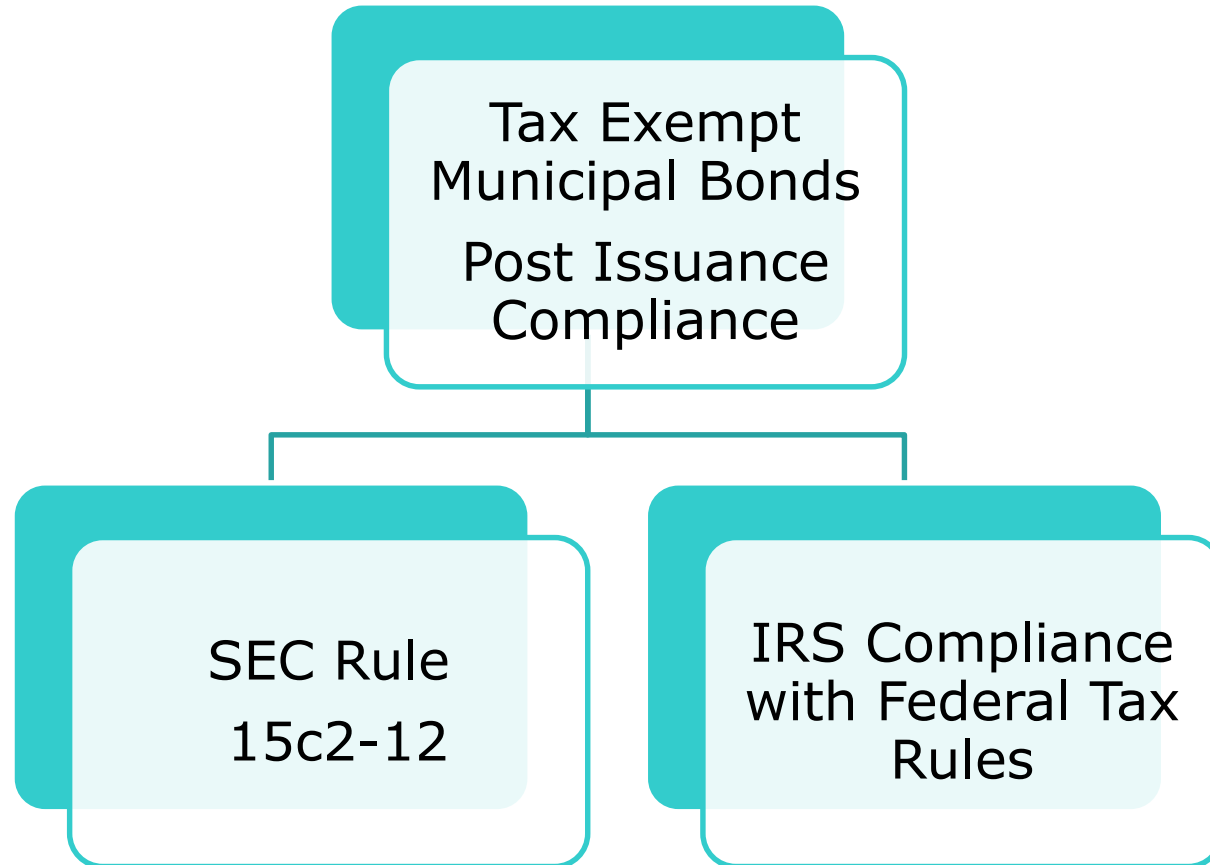


Life Cycle of a Municipal Bond

- ❖ Municipal bond financing is a multi-step long-term commitment
 - Pre-Issuance Phase
 - Issuance Phase
 - **Post-Issuance Phase**
 - **Rule 15c2-12**
 - **Tax Compliance**



Bond Compliance - After Your Bond Issue Closes





What Changes Have Occurred in the Municipal Market for School Finance Officers?

- **2010 SEC Amended Rule 15c2-12**

SEC issued “interpretive guidance” to underwriters – must be able to form a “reasonable basis” that the issuer will comply with its continuing disclosure requirements. The SEC noted “mitigating” factors can be taken into consideration by the underwriter – including whether or not the issuer has adopted written policies and procedures to comply.

- **2010 IRS Releases New Form 8038-G**

IRS encourages Issuers to adopt Tax Compliance Policies and Procedures and ask the issuer to

- **March 2014 - SEC Launched the MCDC Initiative**

The MCDC Initiative targeted issuers that made materially inaccurate statements in final official statements regarding their prior compliance, as well as lead underwriters for both competitive and negotiated offerings in which the final official statement contained materially inaccurate statements regarding an issuer’s prior compliance. A requirement the SEC’s settlement terms will be formal adoption of policies and procedures to assure future compliance.



Post Issuance Phase - Continuing Disclosure Requirements

Issuers must promise to provide (at least) annual financial information to investors through EMMA.

Issuers must notify the market when certain material events occur.

Very, Very Important!

Issuers must file a “failure to file” notice if the information they promised to provide is not available within the period specified in the contract at the time of the primary offering!

Develop Post Issuance Policies and Procedures to comply with the bonds post issuance compliance requirements.

Establish Policies and Procedures for Complying with Rule 15c2-12 – Step 1



1. Identify the individual(s) who will be responsible for speaking on behalf of the issuer and establish a protocol for such person(s) to approve all external communication.

CFO, Finance Director, Superintendent

Establish Policies and Procedures for Complying with Rule 15c2-12 – Step 2



2. Depending on the issuer's size, consider creating a "Disclosure Working Group" or team (the "DWG") and meet periodically (at a minimum annually) to discuss the continuing disclosure responsibilities.

Establish Policies and Procedures for Complying with Rule 15c2-12 – Step 3



Step 3 – Begin developing written policies and procedures addressing:

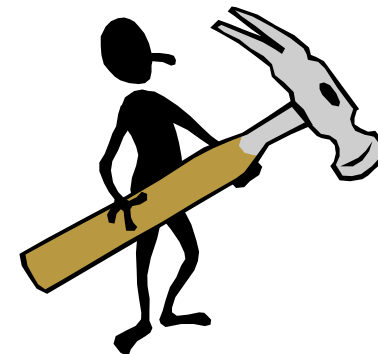
- **Annual Report – Identification of information required to be submitted per the continuing disclosure agreements and date(s) of submission.**
- **Event Notices – Identification of person(s) responsible for monitoring events, and if there is a materiality requirement, determining materiality.**
- **Voluntary Event Disclosure – Identification of potential areas of investor interest and the person(s) responsible for monitoring such information.**
- **Other Information filings – Information required to be filed with other entities (i.e. rating agencies, bond insurers, state agencies, etc.**
- **Website Disclosure - monitoring issuer's website information. Identify person(s) responsible for monitoring.**
- **Primary vs. Secondary Market Disclosure - identify person(s) and/or market professionals who are involved with preparation of primary and secondary market disclosure. Make sure primary matches secondary market requirements as much as possible – only agree to what is operationally under your auspices.**



Annual Report Requirements - Audits

Audit – review each CDA requirements for filings of audited financial statements. List should include bonds which are exempt from the Rule – like Direct Bank Loans or Private Placements.

Name of Issue/Principal Amount	Date of Issue	Final Maturity Date	CUSIP for Final Maturity	Trustee or Paying Agent	Date by which Annual Report Must Be Filed (or "exemption" under the Rule)





Annual Report Requirements – Financial and Operating Data

Annual financial and operating Information: The below information and operating data listed is commonly found in CDAs, and is used only as examples:

Financial Information and Operating Data	Bonds for Which Information is Required	Source of Information	DG Team Member(s) Responsible for Drafting and/or Compiling	DG Team Member(s) Responsible for Reviewing	Date by which Information Must Be Filed	Date Information Was Filed
Audit/CAFR	All	Auditors				
Budget for Current FY	All	Budget Office				
Five-Year Summary Update	All	Finance Director				
Rate Covenant Compliance	2008 Bonds	Finance Director				
Debt Information	All	Debt Office				



Event Notices

Events need to be filed within 10 days of occurrence. List was revised under the 2010 amendments.

Event	DG Team Member(s) Responsible for Monitoring	Date of Occurrence of Event	DG Team Member(s) Responsible for Determining Materiality (if required)	DG Team Member(s) Responsible for Drafting Notice	Date Event Notice Was Filed
Principal and interest payment delinquencies			n/a		
Non-payment related defaults, if material					
Unscheduled draws on debt service reserves reflecting financial difficulty			n/a		
Unscheduled draws on credit enhancements reflecting financial difficulty			n/a		
Substitution of credit or liquidity providers, or their failure to perform			n/a		
Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701 TEB) or other material notices of determination with respect to the tax status of the security or other material events affecting the tax status of the security			n/a (for adverse tax opinions and the issuance by the IRS of proposed or final determinations of taxability)		
Modifications to rights of security holders, if material					
Bond calls, if material, and tender offers			n/a (for tender offers)		
Defeasances			n/a		



Voluntary Disclosure Events

Because providing this information is voluntary, the DWG must monitor and seek out events which may impact the issuer and bring any events to the DWG's collective attention so that a determination can be made if the event should be disclosed. An example might be if the School Board's largest tax payer files for bankruptcy protection or if severe storms impacted bond financed assets.

Information	Source	DG Team Responsible for Monitoring	Date Information was Identified	Date Information was Reviewed by DG Team	Date Information was Disclosed or Determined not to be Disclosed
Interim Financials	Board package	Finance Director			
Pension Report	Consultant	Finance Director			
New Industry	Development Council	Economic Development Office			
Changes in GASB Reporting Requirements	GASB	Finance Director			



Issuer Website Monitoring

- ✓ It is expected that the DWG will be responsible for monitoring website content and reviewing the information set forth on such website. Appropriate “disclaimer” language on the website must be considered in order to educate the viewer in terms of where information intended for investors can be found and the investor’s acknowledgement of the limitations of such reliance. Coordination between the DWG and elected officials must occur before the release of any public statements about any financial condition of the School District.

What would happen if inaccurate information is published on the issuer’s website?



Third Party Information

Often the issuer may be required to file financial information with third parties such as rating agencies or credit enhancers (or to banks or other private placement parties if direct bank loans or private placements).

Financial Information and Operating Data	Bonds for Which Information is Required and Requesting Party	Source of Information	DG Team Member(s) Responsible for Drafting and/or Compiling	DG Team Member(s) Responsible for Reviewing	Date by which Information Must Be Filed	Date Information Was Filed
Quarterly Financial Statements	2008 Bonds Moody's	Budget Office				
Budget Amendments	All Florida Division of Bond Finance	Budget Office				
Issuance of Additional Bonds	All S & P	Finance Director				
Bond Document Amendments	2008 Bonds Wells Fargo Bank	Chief Financial Officer				



Coordinating Continuing Disclosure with Primary Disclosure

1. It is expected that the DWG will be responsible for collecting and reviewing information set forth in official statements prepared in connection with new bond offerings.
2. The "Management's Discussion and Analysis" from the prior year's audited financial statements should be reviewed by the DWG to ensure that the unaudited information which was provided in that portion of the financial statements is updated.
3. Never obligate yourself to provide information that is difficult to collect or measure.



Post Issuance Compliance - Part 2

IRS Post Issuance Compliance

MSRB Expands Enforcement Support with Agreement to Assist IRS

Date: October 24, 2011

MSRB EXPANDS ENFORCEMENT SUPPORT WITH AGREEMENT TO ASSIST THE IRS

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) announced today that it has expanded the support it provides to federal regulatory organizations with an agreement to provide municipal market data to the Internal Revenue Service (IRS) in connection with its enforcement of tax laws related to municipal securities.

The MSRB regulates the \$3.7 trillion municipal market and currently provides information and data to regulatory authorities that enforce MSRB rules governing municipal market financial professionals. The new agreement extends the MSRB's enforcement support to the IRS for its enforcement of federal internal revenue laws related to the municipal securities market. The MSRB will provide the IRS with municipal market data and documents collected through MSRB information systems.

"Industry compliance with federal tax laws is fundamental to a fair and efficient municipal market," said MSRB Executive Director Lynnette Kelly Hotchkiss. "Investments in technology have enabled the MSRB to make municipal market data more readily available to regulators and our agreement with the IRS will ensure that MSRB data and other support are readily available to the IRS for its enforcement activities."

"We appreciate the assistance from the MSRB. This agreement helps the IRS foster the best market conditions for both municipal bond issuers and investors," said Joseph H. Grant, Acting Commissioner of the IRS Tax Exempt and Government Entities Division.

Under federal securities law, the MSRB has a statutory mandate to provide enforcement support to regulatory authorities. The MSRB assists authorities that enforce MSRB rules, including the Securities Exchange Commission, the Financial Industry Regulatory Authority and appropriate bank regulators, with real-time access to market transactions, training on MSRB rules and data analysis. The MSRB also meets regularly with enforcement authorities to discuss municipal market issues and coordinates on education and outreach activities related to compliance with MSRB rules.



Post Issuance Compliance - Part 2

IRS Post Issuance Compliance

“This is the first time we’re providing data to a regulatory organization to help them **enforce their laws**,” MSRB executive director Lynnette Hotchkiss said in an interview.

The Bond Buyer

- *Reg Web*
- *MCDC Results*



Federal Tax Rules Compliance – Questions

How does the IRS view inadequate record keeping and compliance systems?

Answer: Negatively – may result in audit of bonds

How does the IRS promote written post-issuance compliance procedures?

Answer: through webinars, conferences, questionnaires, etc.

What are the implications of the revised Form 8038?

Answer: Every issuer must affirmatively state if written P&P adopted

What are key elements of a compliance system?

Answer: Discussed on later on in presentation



Important of Adequate Post Issuance Compliance Policies & Procedures

- **New era of IRS oversight**
- **Results of recent compliance initiative suggest potential widespread problems**
- **Areas of concern include:**
 - **Compliance monitoring**
 - **Inadequate record retention**
 - **Failure to pay rebate**
 - **Excess private use**
- **Form 8038-G redesigned to identify issuers with no written policies and procedures**
- **More favorable treatment by the IRS**





Why You Should Care?

1. IRS has **doubled the number of agents** and **tripled the number of audits performed**
2. Typically, bond documents hold **Issuers responsible** for any **damages** stemming from loss of tax exempt status
3. The cost of a closing agreement can be **expensive** depending on the severity of the non-compliance
4. The IRS stated Issuers who have adopted written policies and procedures will be given favorable treatment vs. those who haven't adopted written policies and procedures
5. **Will be required to answer** questions on written policies and procedures on Form 8038-G and a negative response will be a red flag





What Should Written Tax Procedures Cover?

Written procedures should include the following:

- ❖ **Identifying the official or employee responsible for review**
- ❖ **Training the responsible reviewer (providing CPE)**
- ❖ **Performing due diligence review at regular interval**
- ❖ **Retention of adequate records to substantiate compliance**
- ❖ **Taking timely actions to resolve identified noncompliance**
- ❖ **Procedures ensuring steps will be taken to correct noncompliance**



Listen to the IRS!

The goal of establishing and following written procedures is to identify and resolve noncompliance, on a timely basis, to preserve the preferred status of tax-advantage bonds. Generally, an issuer that has established and followed comprehensive written procedures to promote post-issuance compliance is less likely than an issuer that does not have such procedures to violate the federal tax requirements related to its bonds.



IRS Website



Benefits of a Post Issuance Policies and Procedures

- 👍 **Helps manage private use limitation (use modeling to maximize financially rewarding opportunities)**
- 👍 **Saves time and money re: lost staff time and legal fees if hit with IRS audit**
- 👍 **Arbitrage Rebate filings are made timely and accurately**
- 👍 **Provides “PROOF” of on-going compliance monitoring**
- 👍 **Provides more favorable treatment by the IRS in VCAP and/or in an examination**





Questions & Answers





Speaker Bios

Lisa Olsen **Senior Vice President** **Digital Assurance Certification (“DAC Bond”)**

Lisa has been a Senior Vice President of DAC since its inception in 2000. Lisa has extensive experience in compliance reporting and investor relations services to thousands of state and local governments, school districts, housing, healthcare and other issuers of municipal bonds throughout the country and abroad.

During Lisa’s 14 years experience in the municipal bond industry, she participated in billions of dollars of financings. Lisa’s primary duties involve marketing DAC services to issuers. In addition to those duties, Lisa and her group oversees and assists borrowers, institutional investors, Wall Street investment bankers and other market participants in establishing portfolios to aid them in accessing issuer information via the DAC site. Lisa’s group works collaboratively with the client service and the support department in managing all client relationships.

Recently, Lisa has been assisting in the deployment of DAC’s post issuance compliance monitoring system for federal tax rules and DAC’s post issuance compliance services for Build America Bonds and other tax credit bond issues.

Lisa was a participant in initial discussions with the Securities and Exchange Commission and worked closely with DAC’s Chief Executive Officer and outside Counsel to develop DAC’s Disclosure Dissemination Agent Agreement conforming to SEC Rule 15c2-12.

Lisa is frequently invited to speak before groups interested in learning about compliance and investor related outreach programs and has authored several articles published in municipal finance related periodicals. Lisa is a member of the Healthcare Financial Management Association, holds memberships in Government Finance Officers Association, National Federation of Municipal Analysts, Southern Municipal Analyst Society, National Association of College and University Business Officers and the Association of School Business Finance Officers. She received Bachelor of Science degree from Christian Brothers University in Memphis, Tennessee majoring in Marketing and Management.

Lisa was recognized by Smith’s Research and Ratings with an award because of her leadership in creating best practice disclosure standards and municipal bond investor relations programs for the municipal industry.