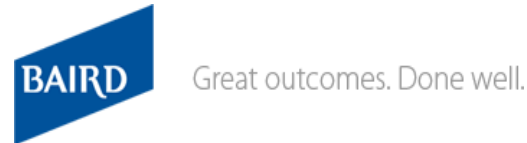


# Wednesday's News You Can Use

## Continuing Disclosure on Public Bond Transactions and Emerging Ideas on Post-Issuance Compliance



# Speakers

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Great outcomes. Done well.

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# Learning Objectives

At the end of this session, you will be able to-

- Recite issuer's responsibility for post issuance compliance for both tax laws and securities laws
- Discuss importance of establishing written procedures to ensure disclosure compliance
- Describe how EMMA is used to provide access to offering, refunding and disclosure documents
- Discuss the importance of SEC RULE 15c2-12 in providing access to disclosure documents

# Post Issuance Compliance Obligations for Tax Exempt Bonds

**After the tax exempt bonds are issued, then what?**

- Post issuance *tax law* compliance
- Post issuance *securities law* compliance

[www.irs.gov/Tax-Exempt-Bonds/TEB-Post-Issuance-Compliance-Some-Basic-Concepts](http://www.irs.gov/Tax-Exempt-Bonds/TEB-Post-Issuance-Compliance-Some-Basic-Concepts)

# Tax Law Compliance - Overview

- **Background**
- **Source of IRS' Interest**
- **Preventive Measures**

[www.irs.gov/uac/Tax-Exempt-&-Government-Entities-Division-At-a-Glance](http://www.irs.gov/uac/Tax-Exempt-&-Government-Entities-Division-At-a-Glance)

# Tax Law Compliance Written Procedures

- **Substance**
- **Project and Proceeds**
- **Effect of Procedures**

- **Process**
  - Who's in charge?
  - Who keeps procedures?
  - Who gets results?
  - Privileged?

[www.irs.gov/Tax-Exempt-Bonds/TEB-Post-Issuance-Compliance-Some-Basic-Concepts](http://www.irs.gov/Tax-Exempt-Bonds/TEB-Post-Issuance-Compliance-Some-Basic-Concepts)

# Policies and Procedures: Substance

Issuers should consider adopting written disclosure policies and procedures that include the following:

- A. Identify who is responsible for what;
- B. State the process by which disclosure is drafted and reviewed;

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# Policies and Procedures: Substance

- C. Provide checks and balances so there is adequate supervision and reasonable disbursement of responsibilities so that too much power and information is not placed in just one person;
- D. Due diligence review at regular intervals;
- E. Identifying the official or employee responsible for review;

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# Policies and Procedures: Substance

- F. Training of the responsible official/employee;
- G. Retention of adequate records to substantiate compliance;
- H. Procedures reasonably expected to timely identify noncompliance; and
- I. Procedures ensuring that the issuer will take steps to timely correct noncompliance.

# Tax Law Compliance

- **Role of the Issuer**
  - Direct Issuance v. Conduit Issuance
- **Record Retention**
- **Self-Help and Self-Correction**
  - Voluntary Closing Agreement Program (VCAP)
  - Allocation

# Role of the Issuer

- Direct Financing: issuer directly both issues and offers securities at its own risk
- Conduit Financing: issuance of municipal securities by a governmental unit to finance a project to be used by a third party (the “conduit borrower”)
- Conduit borrower is liable for making debt service payments on the bonds

# Record Retention

The authorized officer (Bond Compliance Officer) should maintain, with respect to each issue of Tax-Exempt Bonds, in paper or electronic format, until **three (3) years** after bonds have been paid and retired, the following:

1. Bond transcript (including Tax Certificate and Agreement and all 8038 series forms)

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# Record Retention

2. Rebate reports
3. Compliance reports (or summaries thereof) prepared in accordance with the compliance policy
4. Trustee reports
5. Bond counsel advice
6. Agreements with any nongovernmental users of facilities financed or refinanced with the proceeds of such bonds

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# Record Retention

7. Escrow verification reports
8. Documents relating to bidding procedures for any investments

[www.irs.gov/pub/irs-tege/p4344.pdf](http://www.irs.gov/pub/irs-tege/p4344.pdf)

# VCAP

- Voluntary Closing Agreement Program
- [www.irs.gov/Tax-Exempt-Bonds/TEB-Voluntary-Closing-Agreement-Program](http://www.irs.gov/Tax-Exempt-Bonds/TEB-Voluntary-Closing-Agreement-Program)

# Self-Help, Self-Correction

## VCAP

- Assist governmental issuers in resolving tax law violations
- Enter into a closing agreement to permanently/conclusively resolve current tax compliance issues
- Issuers that have adopted written post-issuance compliance procedures can be eligible for more favorable settlement terms

(Internal Rev. Manual)

## Allocation

- Allocation
- Final Allocation
- Re-Allocation



# Securities Law Compliance Overview

- **Background**

Legal Requirements, the EMMA System

- **Role of the Dissemination Agent**

Assistance in making timely filings

- **Enforcement: City Securities Ruling**

[www.sec.gov/litigation/admin/2013/33-9471.pdf](http://www.sec.gov/litigation/admin/2013/33-9471.pdf)

# Legal Requirements and the EMMA System

- Electronic Municipal Market Access (“EMMA”) system, established by the Municipal Securities Rulemaking Board (“MSRB”)
- Provides the public electronic access to offering documents and refunding documents
- Provides copies of continuing disclosure documents as required by the SEC
- EMMA has a new tickler system – two emails will be sent reminding about continuing disclosure requirements, one to the continuing disclosure counsel and another to the client
- Issuers may submit the required information directly or with an assigned dissemination agent

# EMMA System

## www.emma.msrb.org

EMMA Dataport:  
gateway to submit  
documents

The screenshot shows the EMMA System homepage. At the top left is the MSRB logo (Municipal Securities Rulemaking Board). The main header reads "EMMA® - Electronic Municipal Market Access" and "The Official Source for Municipal Disclosures and Market Data". A navigation bar includes links for "About EMMA", "Search", "529 Plans", "Market Activity", "Education Center", and "EMMA Dataport". A "Quick Search" box is present with the placeholder text "Enter CUSIP or Name".

Below the navigation bar, there are three main sections: "Search Securities" (with a right-pointing arrow), "Sign Up for MyEMMA" (with a right-pointing arrow), and "Discover Trade Prices" (with a right-pointing arrow). The "Discover Trade Prices" section includes a background image of financial data.

On the right side, there are two call-to-action buttons: "Sign up to receive news about EMMA" (with an envelope icon) and "Read about recent enhancements to EMMA" (with a checklist icon). Below these is a "Read all news on EMMA" link with a "3" in a green box.

At the bottom, there are three columns of content: "EMMA EDUCATION CENTER" (with a book icon), "MARKET ACTIVITY" (with a line graph icon), and "DOCUMENT SUBMISSION" (with a document icon). Each column contains a brief description and a list of links.

Annotations include a blue arrow pointing from the top right text to the "EMMA Dataport" link in the navigation bar, and another blue arrow pointing from the "Schedule EMMA email reminder" text to the "Use EMMA's Email Reminder Service" link in the "DOCUMENT SUBMISSION" section.

Schedule  
EMMA  
email  
reminder

# EMMA System

Login and Training Modules

**EMMA Dataport**


- Overview
- Submissions by Dealers
- Submissions by Issuers
- Submissions by Obligated Persons
- MSRB Subscription Services
- MSRB System Status

### Municipal Securities Document Submission

Municipal securities dealers, issuers, obligated persons and their designated agents provide the Municipal Securities Rulemaking Board (MSRB) with electronic documents to be posted on EMMA. EMMA Dataport is the utility through which submissions of documents and related information are made to MSRB Market Transparency Programs. For information about how to make specific submissions, please click on the applicable link below.

- Submissions by Dealers
- Submissions by Issuers
- Submissions by Obligated Persons


**Access EMMA Dataport to Submit Documents**



**Login to MSRB Gateway**





Don't have an account? [Register](#)

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 [Access Online Training about Submitting to EMMA](#)

[MSRB Gateway Manual](#)

#### EMMA Tools for State and Local Governments

-  [Schedule Email Reminders for Recurring Financial Disclosures](#)
-  [EMMA Trade Monitor](#)
-  [Getting to Know EMMA](#)
-  [State and Local Government Toolkit](#)

# Role of the Dissemination Agent

- Responsible for the collection, calculation and/or preparation of all statutorily required information
- Prepares Annual Report
- Disseminates Annual Report to EMMA system and other state repositories

# SEC, City Securities ("City") Ruling



*Invested in you.*

- Facts
  - Inadequate due diligence
  - No procedures to ensure prompt receipt of issuers' disclosure submissions
  - Mischaracterization of expenses
- Reasonable Basis
  - An underwriter must have “reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings.” Dolphin and Bradbury, Inc. v. SEC, 512 F.3d 634
  - Rule 15c2-12

# How to Avoid City's Predicament

- Have written supervisory policies and procedures as it relates to SEC Rule 15c2-12
- Develop a certification process to ensure compliance with Rule 15c2-12
- Authorize a specific individual to review and approve expenses to ensure proper billing
- Keep in mind, some issuers are requiring conduit borrowers to adopt post-issuance compliance measures

# Securities Law Compliance – Disclosure, Non-Disclosure

- **Voluntary Disclosures**
- **Required Disclosures of Material Events**
  - Statutory Events
  - Non-statutory categories of annual report information
  - Timing
- **Impact of Non-Compliance**



# SEC RULE 15c2-12

## Required Disclosure

1. Annual/Audited Financial Statements
2. Operating Data
3. Events Notices
4. Notice of failure to file required financial information

## Voluntary Disclosure

1. Bank Loans
2. Agreement to post annual financials within 120/150 days after fiscal year end
3. GAAP standard used in preparation of annual financials, either GASB/FASB standards
4. URL for direct access from EMMA to Issuer's investor website
5. Interim or quarterly financials
6. Voluntary event notices
7. Preliminary Official Statements
8. "Other" category

# Required Disclosures of Material Events

[Issuer] shall in a timely manner ***not in excess of ten business days after the occurrence of the event***, provide notice of any of the following events with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves;

*Continued on next slide*

# Required Disclosures of Material Events

4. Unscheduled draws on credit enhancements;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions or other material events affecting the tax status of the Bonds;
7. Modifications to rights of security holders, if material;

*Continued on next slide*

# Required Disclosures of Material Events

- 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;

*Continued on next slide*

# Required Disclosures of Material Events

12. Bankruptcy, insolvency, receivership or similar event of the obligated person;
13. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

# Timing

- Strict 10 business day time limit
- Enforcement of Non-Compliance
  - SEC sanctions
  - Possible heavy fine and/or jail time
  - Could be barred from any type of securities dealings
  - Stringent SEC surveillance

# Thank You

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Peck, Shaffer & Williams  
LLP



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Great outcomes. Done well.

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