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What You Need to Know About EMMA and Your Reporting Requirements

PROMOTING EXCELLENCE IN GOVERNMENT

Presenters

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Learning Objectives

To educate finance officials about their role, responsibility and best practices as it relates to continuing disclosure, event notices, etc.

At the conclusion of the session, the participant should be able to...

- Recall the origins of the Continuing Disclosure Rule
- Know the current continuing disclosure environment for public bond offerings and private placements
- Gain knowledge of issuer filing requirements and the information to be filed
- Manage the logistics for the filing of reports to EMMA



Context

- **Rule inspiration → secondary market investors**
- **Changes to the Rule over the years: Don't assume the world hasn't changed**
 - Exemptions
 - Filing logistics
 - Event Notices
- **Enforcement: Why we care today**
 - MCDC: History, actions and going forward
 - Limitations on market access
 - Potential liabilities



Basic Elements of the Rule

- **Who is bound by the Rule? (the Underwriter)**
 - (b)(5)(i) A Participating Underwriter shall not purchase or sell municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that ...

- **Who provides a continuing disclosure agreement?**
 - ... an issuer of municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement has undertaken, either individually or in combination with other issuers of such municipal securities or obligated persons ...
 - May be more than one party



Basic Elements of the Rule (continued)

➤ Parts of the Continuing Disclosure Agreement (CDA)

- Annual Financial Information
- If not submitted as part of the annual financial information, then when and if available, Audited Financial Statements
- Event Notices (10 business days from the occurrence of the event)
- Late Filing Notice (in a timely manner)

➤ Due date and specificity of information

- Be aware of differing due dates or day counts
- Provide reasonable detail

CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (this "Disclosure Certificate") is executed and delivered by _____ County, Georgia (the "County") in connection with the issuance of \$ _____ in original principal amount of the _____ Development Authority Revenue Refunding Bonds, Series 2017 (the "Series 2017 Bonds"). The Series 2017 Bonds are being issued pursuant to a resolution of the Development Authority (the "Authority"), adopted on May _____, 2017 (the "Bond Resolution"). The County hereby covenants and agrees as follows:

SECTION 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the County for the benefit of the Beneficial Owners (as herein defined) of the Series 2017 Bonds and in order to assist the Participating Underwriter (as herein defined) in complying with the Rule (as herein defined).

SECTION 2. Definitions. In addition to the definitions set forth in the Bond Resolution, which apply to any capitalized terms used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the County pursuant to the Rule and this Disclosure Certificate.

"Beneficial Owner" shall mean any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any of the Series 2017 Bonds (including persons holding the Series 2016 Bonds through nominees, depositaries or other intermediaries) or (b) is treated as the owner of any of the Series 2016 Bonds for federal income tax purposes.

"Dissemination Agent" shall mean any person(s) appointed from time to time by the County to assist in carrying out its obligations under this Disclosure Certificate.

"EMMA" means the MSRB's Electronic Municipal Market Access System, as described in Securities Exchange Act of 1934, Act Release No. 34-59062, which receives electronic submissions of the Annual Report on the EMMA website at <http://www.emma.muni.org>.

"Fiscal Year" shall mean any period of twelve consecutive months adopted by the County as its fiscal year for financial reporting purposes and shall initially mean the period beginning on January 1 of each calendar year and ending December 31 of such calendar year.

"Listed Events" shall mean any of the events listed in Section 5 of this Disclosure Certificate.

"MSRB" shall mean the Municipal Securities Rulemaking Board, or any successor thereto. Currently, the MSRB's address is:

MSRB
1900 Duke Street, Suite 600
Alexandria, VA 22314
Attn: Disclosure

"Participating Underwriter" shall mean State1 Nicolas & Company, Incorporated.

"Rule" shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

SECTION 3. Provision of Annual Reports.

(a) Not later than _____ days after the end of the Fiscal Year, commencing with Fiscal Year 2017, the County shall provide, or cause the Dissemination Agent (if other than the County) to provide, an Annual Report electronically to EMMA. The Annual Report will be made to EMMA as PDF files configured to permit

D-1



Basic Elements of the Rule (continued)

- **Description of prior failures in offering document (definition of Final Official Statement)**
- **The Underwriter's reasonable basis to believe the obligated person will comply**
- **Exceptions:**
 - The entire issue is for less than \$1 million;
 - The bonds are sold to investors in units of no less than \$100,000 and are sold to no more than 35 sophisticated investors;
 - The bonds are sold in \$100,000 minimum denominations and mature in nine months or less from initial issuance;
 - The bonds were issued before July 1995 (or prior to December 1, 2010, for certain VRDOs)



What is Annual Financial Information?

➤ **What do we know?**

- From the GFOA: If the issuer has determined that financial information is material and must be included in its official statement, its CDA must require that the information be updated annually.
- Financial and operating data. Not demographic and not economic.

➤ **What do we not know?**

- No clear guidance on what is or is not financial or operating in nature

➤ **Examples**

- General Obligation
- Water/Sewer



Voluntary Filings

- **Municipal issuers are not required to provide any information to the market other than as specified in the CDA**
 - This may not include all material information (i.e., information that a reasonable investor would want to have when making an investment decision)

- **The SEC's goal is to get all material information to the public with respect to the bonds so that investors may make informed investment decisions.**
 - An issuer should consider making voluntary filings when major events occur that are not covered by the CDA.



- **Risk and benefits**



Voluntary Filings (continued)

➤ **Private placements / Direct Bank Loans**

- Not required by the Rule
- Often requested by the financial institution purchasing the bonds and rating agencies (if the issuer maintains publicly offered transactions)
- May contain covenants or provisions that impact secondary bond market and outstanding credit ratings
- Furthers the goal of enhancing disclosure to the investing public
- www.gfoa.org/gfoa-alert-bank-loan-disclosure



Policies and Procedures for Compliance

- **Maintain consistency in your CDAs**
 - Filing deadlines/day counts
 - Types of information, level of detail and format
 - Information readily available now may not be so available in five years
 - Build that into your internal electronic calendars

- **Sign-up for EMMA notifications/emails**
 - Have more than one person receive them
 - Build that into your internal electronic calendars



Policies and Procedures for Compliance

- **GFOA's recommendations for a written policy:**
(www.gfoa.org/sites/default/files/GFOA_understandingcontinuingdisclosureBP.pdf)
 - Have a clear understanding of the specific reporting responsibilities as defined in the bond's CDA
 - Identify the information that is obligated to be submitted in an annual filing
 - Disclose the dates on which filings are to be made
 - List the required reporting events as stated by the SEC and your CDA
 - Ensure accuracy and timeliness of reported information
 - Identify the person who is designated to be responsible for making the filings



Policies and Procedures for Compliance (continued)

- **GFOA's recommendations for a written policy:**
 - Issuer representatives responsible for filing continuing disclosure should carefully review and understand the specific requirements in the CDA for each individual bond issue
 - Set required timing commitments within a CDA that are reasonable to achieve
 - Event notices should be filed for events specifically identified in accordance with SEC Rule 15c2-12
 - Take steps to ensure standards are being diligently followed. Continuing disclosure policies and practices should be periodically reviewed to ensure consistency with market and regulatory expectations



Filing Mechanics

- **Where do I file?**
- **Word-searchable .pdf (G-32)**
- **What is filed?**
 - Annual Financial Information/
Audited Financial Statements
 - Incorporation by reference
 - Event Notices
- **CUSIP-based filing**
- **EMMA guidebook**
 - www.msrb.org/msrb1/emma/pdfs/EMMACDManual.pdf
 - Helpline: (202) 838-1330
- **Hiring a dissemination agent**



Where Do We Go From Here?

- **Accuracy of annual reports**
- **Statements outside of disclosure documents**



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