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Post Issuance Compliance

What To Expect When You Have Issued Bonds

Presented by

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Introduction



The three stages of a bond issue are similar to childbirth -

- Stage 1: Excitement and anticipation
- Stage 2: Work (fun at first, not so much at the end)
- Stage 3: Living with the bonds/baby
- What do I do now?
- A basic understanding/what to expect



Three Main Areas of Concern

- Continuing disclosure
- Private business use
- Arbitrage rebate





Continuing Disclosure



Background

- SEC registered company filings (types and purpose)
- No similar scheme for municipal bonds
- Investors left to their own devices
- Lead to adoption of SEC Rule 15c2-12 (the “Rule”)



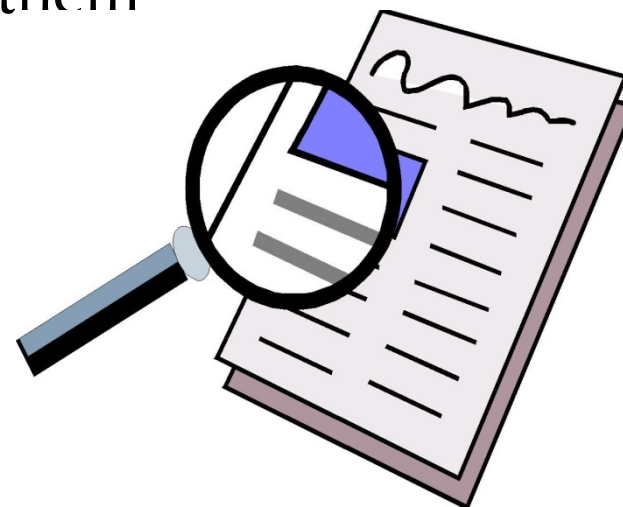
The Rule

- Written undertaking
- File financial and operating data annually with EMMA
- File certain material event notices with EMMA



Written Undertaking

- Form: continuing disclosure certificate or agreement (“CDC”)
- When is it executed? When the bond purchase agreement is executed or when the bonds are issued
- Get copies of all CDCs and read them



Filing Deadline

- Specified in CDC
- Usually 180 days, sometimes 270 days
- If there are different deadlines, use the earliest
- Make the deadlines the same in new CDCs
- Sign up for EMMA email reminders



Financial and Operating Data

- Financial data = audited financial statements
- File unaudited if audited are not available
- Operating data specified in CDC (usually, flows, number of customers, rates, ten largest and coverage)
- File operating data as part of CAFR or separate
- If separate, have someone provide a template



Event Notices

- SEC companies all material events
- Municipal issuers only enumerated events
- Most common: calls, defeasances and rating changes (issuer and credit enhancer)
- Somewhat common: substitution of liquidity/credit providers and adverse tax opinions
- New events: Entering into of a material financial obligation (for example, a privately placed bond with a bank) and default, acceleration, termination event or other similar event which reflect financial difficulties (for example, failure to pay, financial covenant default)



Dissemination Agents

- What they do
- What they don't do
- Generally, we don't recommend
- However, compliance is important



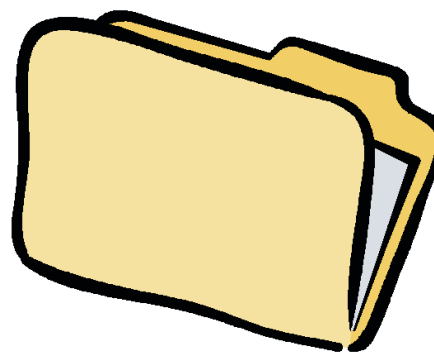
Additional Information

- Investors may ask for information not included in the annual/event filing
- Don't provide it unless it is also posted on EMMA



Voluntary Disclosure

- Issuers aren't required to disclose everything
- But SEC wants full disclosure so investors may make an informed investment decision
- Consider making voluntary filings when major events happen that aren't covered by the CDC or there is a private placement
- May build goodwill with investors and SEC and avoid civil or enforcement actions



When Does an Issuer Disclose?

- EMMA filings
- Other: website, speeches, annual report, public meeting, etc.
- Investors consume information in many forms when making an investment decision
- All information must be accurate and complete



Private Business Use

- Background: Bonds may lose their tax-exempt status if bond-financed facilities are used by a private business (“PBU”)
- PBU can arise in many contexts/ anything that gives nongovernmental user a special legal entitlement that is different from the general public
- Most often: special rates or management contracts

- Safe harbor for management contracts (IRS favors short-term, fixed fee contracts. Profit sharing is prohibited)
- Make sure bond counsel reviews the contracts
- Only applies to facilities financed with bonds that are still outstanding





Conclusion



All issuers should have policies in place to ensure that they comply with their continuing disclosure obligations, monitor private business use and rebate arbitrage



QUESTIONS?



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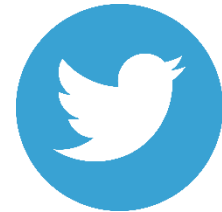
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