

THE SERIOUSNESS OF BORROWING MONEY



**CALIFORNIA SOCIETY OF
MUNICIPAL FINANCE OFFICERS**

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The SERIOUSNESS OF BORROWING MONEY



Moderator: Peg Henry, Stifel Financial Corp.

Panelists: Julia Cooper, City of San Jose
Monique Winkler, US SEC
Mark Campbell, CDIAC
Dave Sanchez, Norton Rose Fulbright

TOPICS



- MCDC
- NABL Disclosure Policies and Procedures
- State Requirements for Debt Policies (SB 1029)
- City of San Jose's Case Study: Application of Best Practices
- EMMA is Your Friend

MUNICIPALITIES CONTINUING DISCLOSURE COOPERATION INITIATIVE (MCDC)



- SEC offered favorable settlement terms to issuers who self-reported possible violations involving materially inaccurate statements about prior compliance with continuing disclosure obligations.

MCDC (CONT.)



- Terms of settlements for Issuers
 - Covered by 17(a)(2) of Securities Act, requiring a finding of negligent conduct.
 - Issuer neither admits nor denies SEC's findings.
 - Issuer establishes policies, procedures, and training re continuing disclosure obligations.
 - Issuer makes all required continuing disclosure filings.
 - Issuer discloses settlement terms in OSs for 5 years.
 - No fines.

MCDC (CONT.)



- SEC charged 71 municipal issuers under the MCDC initiative.
- Examples of findings of material misstatements or omissions in MCDC orders.
- Possible actions against issuers who did not self-report.

NABL DISCLOSURE POLICIES AND PROCEDURES



- NABL Paper on “Crafting Disclosure Policies” (August 2015)
- Core Elements
 - Description of types of disclosures covered by policy
 - Clear statement of process and documentation
 - Adequate supervision and responsibilities
 - Training

DISCLOSURE POLICIES AND PROCEDURES (CONT.)



- What Disclosures are Covered?
 - Primary Offering Documents
 - Continuing Disclosure Filings
 - Audited Financial Statements
 - Websites
 - Other Statements

SB 1029 – STATE REQUIREMENTS FOR DEBT POLICIES



- Background
- What SB 1029 Requires
 - Debt Policies
 - Annual Debt Transparency Reports
- Debt Policies - What Do Issuers Need to Do Now?
- Debt Policies - What are the Benefits of SB 1029?
- What is CDIAC Doing to Help Out?

CITY OF SAN JOSE'S CASE STUDY: APPLICATION OF BEST PRACTICES



ADOPT DISCLOSURE POLICIES



- Establish internal controls and systems
- Identify “disclosure documents”
- Identify who is responsible for what information
- Establish checks and balances
- Define process for drafting and reviewing disclosure
- Hire competent auditors and other professionals
- Disclose bad news
- Provide practical and regular training to officials and employees from Council/board members to staff members

SAN JOSE'S APPLICATION OF LESSONS LEARNED



- City Council Debt Management Policy amended on June 9, 2015
 - Reiterates City's commitment to full and complete disclosure of financial and other relevant information to investors in connection with issuance of new and administration of existing debt
 - Acknowledges City Manager in consultation with City Attorney will implement separate written disclosure policies and procedures
- Debt Management Policy undergoing further revisions to incorporate SB 1029 requirements

SAN JOSE'S APPLICATION OF LESSONS LEARNED



- City Administrative Disclosure Policies and Procedures
 - Establish Disclosure Working Groups – Senior Staff knowledgeable about City and City finances
 - Identify “Disclosure Documents” and formalizes review process
 - Identify responsibilities during the review process
 - Formalize procedures for Continuing Disclosure Compliance
 - Training for City Council and staff

SAN JOSE CASE STUDY: CONCLUSION



- San Jose team takes seriously the responsibility to make full and complete disclosure
- Evolutionary process over last 20+ years
 - Development of policies and procedures will help ensure compliance with applicable securities laws
 - Following policies and procedures key
 - Create and document the history

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- Educational materials available on MSRB website to assist market participants from issuer to investor

RESOURCES – DISCLOSURE POLICIES



- [U.S. Securities and Exchange Commission, Report on the Municipal Securities Market, July 31, 2012](#)
- [Understanding Your Continuing Disclosure Responsibilities, Government Finance Officers Association, September 2015](#)
- [Recommended Best Practices in Disclosure for State Government General Obligation and Appropriation Debt, National Federation of Municipal Analysts, September 2015](#)
- [Crafting Disclosure Policies, National Association of Bond Lawyers, August 2015](#)
- [Video – Disclosure Policies: What Every Issuer Should Consider, October 14, 2015](#)
- [White Paper on Best Municipal Bond Issuance Practices, National Federation of Municipal Analysts \(NFMA\), June 2014](#)
- [Disclosure Obligations of Issuers of Municipal Securities, Orrick, Herrington & Sutcliffe, 2011](#)
- [City of Thousand Oaks Debt Policy, 2015](#)

RESOURCES – DEBT POLICIES



- [Best Practice: Debt Management Policy, Government Finance Officers Association, October 2012](#)