ISSUER DISCLOSURE PROCEDURES

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SEC'S BASIC PRINCIPLE

- **Issuer is Primarily Responsible**
- **Ultimately Liable**

SEC EXAMPLES

- **State of New Jersey—Focus on Pension Disclosures**
- **Failure to Disclose Funding Status &Unfunded Liabilities**

SEC EXAMPLES

- San Diego—Pensions & Health Plans for Retirees
- Again, Failure to Disclose Funding Status &Unfunded Liabilities
- Official Statements, Rating Presentations, Continuing Disclosures

SEC EXAMPLES

- **San Diego Former Officials—City Manager, Deputy City Manager for Finance, City Treasurer, Auditor & Comptroller**

- **$25,000 Personal Liability for Three Former Officials ($5,000 for One More)**

SEC EXAMPLES

- **Miami & Officials**
- **Insured Securities**
- **Failure to Disclose Deteriorating Financial Condition**
- **Misleading Information Regarding Remedial Financial Program**
- **Official Statements, Continuing Disclosure, Rating Agencies**
- **“Stale” Information**

SEC EXAMPLES

- **Maricopa County**
- **Failure to Disclose Adverse Financial Developments in Certain Funds**
- **Misrepresentation Regarding Use of Proceeds**
- **“Stale” Information**

SEC EXAMPLES

- **Orange County, Board of Supervisors & Officials**
- **Also Other Local Governments Investing in Pool**
- **Failure to Disclose Adverse Developments & Risks Regarding County Investment Pool**
- **"Stale" Information**

SEC EXAMPLES

- **Syracuse & Officials**
- **Presentation of Unaudited Financial Statements as Audited**

SEC EXAMPLES

- **Numerous Small Local Governments & Officials, *e.g.*—**

- **39 Mississippi Communities—Relied on Underwriter & Bond Counsel, Did Not Read Official Statements, Tax Certificates**

- **Nevada County, Ione & Wasco, CA—Relied on Underwriter, Financial Advisors, Bond Counsel**

- **Dauphin County (PA) General Authority—Board Members Did Not Read Official Statement, Relied on FA, Underwriter, Counsel**

- **Neshannock Township (PA) School District—Relied on Underwriter, Bond Counsel, Did Not Read Tax Certificate**

- **Many Others**

POTENTIAL ISSUER STEPS

THERE ARE NO PRESCRIBED STANDARDS

Issuers Are Lacking Guidance

This Presentation Is for Discussion & Suggestion

Incredible Cost If Something Goes Wrong (San Diego >$20 MM)

No Default Is Necessary

Bond Insurance Not a Protection—Insurer Will Sue

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POTENTIAL ISSUER STEPS

RELIANCE ON PROFESSIONALS

- **Must Rely "Reasonably"**
- **Cannot Rely "Blindly"**

RELIANCE ON PROFESSIONALS

Miami Administrative Law Judge—

"To establish a good faith reliance defense based on the advice of an accountant or an attorney, one must show that she—

(1) made complete disclosure,

(2) sought the advice as to the appropriateness of the challenged conduct,

(3) received advice that the conduct was appropriate, and

(4) relied on the advice in good faith. …

The City has not satisfied those elements. …"

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RELIANCE ON PROFESSIONALS

Best Issuer Reasonable Protections

- Place Competent People in Charge
- Employ Qualified Professionals—BUT Don't Rely "Blindly"
- Develop & Follow Reasonable Internal Procedures
  - ❖ Perform Own Due Diligence
  - ❖ Conduct Own Disclosure Process
- Pay Attention

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RELIANCE ON PROFESSIONALS

- **Underwriters—Adverse**

- **Underwriter Counsel—No Contract with Issuers, Do Not Advise Issuers, Represent Underwriters**

RELIANCE ON PROFESSIONALS

- **Bond Counsel & Disclosure Counsel (Reduce Underwriter Counsel Costs)**
- **"Municipal Advisors"—Fiduciary Duty**
- **Pay Attention to Scope of Services**
- **Avoid Contingent Fees**

RELIANCE ON PROFESSIONALS

- **Don’t Just Rely on Counsel’s Participation in Transaction**
- **If You Have a Concern, Obtain a Specific Unqualified Legal Opinion in Writing**

RELIANCE ON PROFESSIONALS

LIMITS OF LEGAL OPINIONS

- "***We have not verified the information*** contained in the Official Statement (including the Appendices thereto) and ***we do not assume any responsibilities for the accuracy, completeness or fairness*** of any statements contained in the Official Statement."

- "In the course of such discussions and based upon our review of the documents discussed above, ***nothing has come to our attention*** …"

- "(***except*** with respect to the information contained in ***Appendices A, B and C thereto and to financial and statistical data and feasibility study and projections*** included in the Official Statement as to which we make no comment)"

POTENTIAL ISSUER STEPS

GOVERNING BOARDS

GOVERNING BOARDS

- **Establish Disclosure Group & Define Responsibilities**

- **Charge Group with Responsibility to Prepare Disclosure Policies & Procedures ("DP&P")**

- **Designate Key Staff for Disclosure Group & Give Them "Clout"**

GOVERNING BOARDS

- **Provide Disclosure Group with Adequate Funding**
- **Direct Group to Employ Qualified Professionals to Assist**
  - ❖ **Legal**
  - ❖ **Financial**

GOVERNING BOARDS

- **Approve DP&P**
- **Direct Disclosure Group to Implement**

POTENTIAL ISSUER STEPS

DISCLOSURE POLICIES & PROCEDURES

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- **Define Documents To be Reviewed**
  - ❖ **Official Statements**
  - ❖ **Continuing Disclosure Documents**
  - ❖ **Website Investor Page**
  - ❖ **Rating Agency Presentations**

DISCLOSURE POLICIES & PROCEDURES

- **Train Staff on Disclosure**
- **Clear Lines of Responsibilities & Authority as to Approval of Disclosure Documents**
- **Channel Investor Communications Through Designated Official**
  - ❖ **Consistency in Communications**
  - ❖ **Disclose Important Information Publicly**

DISCLOSURE POLICIES & PROCEDURES

- **Provide for Re-Evaluation of DP&P**
- **Revise as Appropriate**
- **ALWAYS Follow DP&P—Can Be a Problem, If Don't**

POTENTIAL ISSUER STEPS

SENIOR ISSUER OFFICIALS

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- **Disclosure Group Should Implement DP&P**
- **Disclosure Documents Should Be Reviewed Page by Page**
  - ❖ **Review in Meetings**
  - ❖ **Don’t Just Mark Up Old Documents**

SENIOR ISSUER OFFICIALS

- **For Each Offering, Develop a Plan for Due Diligence & Disclosure Based upon Credit & Securities Structure**

- **Employ Qualified Professionals & Review Their Contracts & Scopes of Services**

SENIOR ISSUER OFFICIALS

- **Question Information**
- **Verify Information**
- **Review with Appropriate Staff**
- **Check with Original Sources, Documents**

SENIOR ISSUER OFFICIALS

- **Obtain Written Certifications from Third Parties**
- **Only Use Third Party Information from Reliable Sources**
- **Question, Check Third Party Information**
- **Review, Question Feasibility Studies, Projections, Appraisals**
  - ❖ ***E.g.*., Assumptions & Reasonableness**
  - ❖ **Standards, Potential Conflicts, Methodology**

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COMPLETION

- **Senior Officials Sign Off**

- **Governing Body Opportunity for Review, Questions, Comments**

WEBSITES & POST-ISSUANCE COMPLIANCE

NOTE: These are Important Subjects,
But Beyond Scope of this Presentation

OTHER SOURCES

- **IMLA Draft Financing Procedures Checklists (2007)**
- **GFOA, et al., Questions To Ask Before You Approve a Bond Issue (1996)**
- **NFMA, Best Practices in Disclosure, White Papers at www.nfma.org**
- **GFOA, Best Practices at www.gfoa.org**
- **NABL Pending Project on Pension Disclosure**

THE END