



IGFOA ANNUAL CONFERENCE

Moving into the Future with Purpose

Springfield, Illinois
September 9-11, 2024

You've Issued Your Bonds – Now What?

Tom Reedy, Stifel, Nicolaus &
Company, Incorporated

Kent Floros, Chapman and Cutler

September 10, 2024

Timeline

- Bond Issuance Process (2-3 months)
 - Required Corporate Actions (Conduct of Public Hearing; Adoption of Authorizing Ordinance, Bond Ordinance)
 - Preparation of Marketing/Disclosure Document
 - Sale
 - Closing
- **Post Issuance Compliance**
 - **Federal Tax Law Requirements** (from closing until final maturity, plus 3 years)
 - Arbitrage rebate
 - Private use
 - Record retention
 - **Securities Law Requirements** (from closing until final maturity)
 - Continuing Disclosure
 - Subject to SEC Enforcement

Post-Issuance Compliance — Federal Tax Law

Tax Exemption

- Bonds are issued with tax-exempt or taxable interest rates. What does it mean to be tax-exempt?
 - Interest on the bond is not included in the gross income of the bondholder for federal income tax purposes
- What qualifies for tax-exemption?
 - Public purpose capital projects
 - Refundings (within 90 days prior to call date)
 - Often, borrowing for operations requires taxable interest rates

IRS Enforcement

- Various consequences of non-compliance with tax rules:
 - Interest on the bonds could be declared taxable
 - Loss of BAB subsidy, if applicable
 - Additional arbitrage rebate may be owed (non-paid or underpaid rebate amounts, plus interest)
 - Penalties

Track Investment of Bond Proceeds — Arbitrage Rebate Rules

- Arbitrage: Difference between (i) what would have been earned if tax-exempt bond proceeds were invested at bond yield and (ii) the earnings on the investment of such tax-exempt bond proceeds in higher yielding securities.
- Rebate: Issuer must pay (or rebate) arbitrage profits to federal government.
- Anything above bond yield gets paid to the US Treasury, unless you meet one or more exceptions:
 - Small issuer exception
 - Spend-down exceptions

Track Spenddown of Bond Proceeds

- Issuers of tax-exempt bonds must (generally) qualify for a three-year temporary period
- Qualification for three-year temporary period is based on reasonable expectations at the time of issuance
 - Must reasonably expect to spend bond proceeds as follows:
 - *Expenditure Test—85% within 3 years*
 - *Time Test—5% within 6 months*
 - *Due Diligence Test*
- Arbitrage/Rebate, however, is based on actual facts: Issuers must keep records of how the bond proceeds were invested, when the bond proceeds were spent and what facilities/improvements the bonds funded

Unspent Bond Proceeds?

- After three years from the closing date (upon expiration of the three-year temporary period), tax-exempt bond proceeds:
 - must be yield restricted; and
 - may not be invested in investments guaranteed by the federal government (such as FDIC-insured CDs).
 - Exception: may invest in U.S. Treasury Securities

Arbitrage/Rebate

- Checklist for post-issuance compliance with arbitrage rebate:
 - If not small issuer rebate exempt, track investment return against bond yield
 - Keep separate account/accounting of expenditure of bond proceeds and bond-financed projects
 - Monitor compliance with temporary period expectations for expenditure of bond proceeds
 - If not small issuer rebate exempt, monitor compliance with 6-month, 18-month or 2-year spending exceptions to rebate, if relevant
 - Arrange for timely computation of rebate liability and, if rebate is payable, for timely filing of Form 8038-T and rebate payment

Monitor the Use of Bond Financed Facilities — Private Business Use and Payments

- Tax exemption does not apply to any “private activity bond”, with limited exceptions
- A private activity bond is a bond that has excessive private business use AND has excessive private payments/security
- De minimis allowance
 - Private business use is limited to 10%, but
 - 5% limit for “unrelated” or “disproportionate” private business use (with little guidance from the IRS), so most tax counsel use the 5% limit as the baseline

Private Business Use and Payments

- “Private business use”
 - More than 5% of bond proceeds finance a public facility used by a non-governmental trade or business
 - Examples of private use:
 - Sale, transfer or lease of property to private user
 - Management of property by private user under a management contract
- “Private payment or security”
 - More than 5% of debt service on the bonds is secured by an interest or derived from payments related to private use
 - Example of private payment:
 - Payments of lease rentals to the issuer by a private operator

Private Business Use and Payments

- Checklist for post-issuance compliance:
 - Allocate bond proceeds and funds from other sources to ensure that bond proceeds are used for qualifying costs
 - Map out what outstanding bond issue financed which facilities and in what amounts; monitor private use of bond-financed facilities to ensure compliance with applicable percentage limitations
 - Identify in advance any new sale, lease or license, management contract, or other arrangement involving private use
 - Keep records of leases and management contracts even if expired

Record Retention

- Sufficient records must be retained to support the tax status over the term of the Bonds, plus three years after the final maturity date
 - For a refunding issue, material records relating to the original new money bonds and material records related to the refunding issue should be maintained until three years after the final redemption of both bond issues
- Consequences if adequate records are not maintained
 - Difficult to calculate private business use
 - Difficult to demonstrate tax compliance in the event of audit

Post-Issuance Tax Compliance Policy

- *Written* procedures that can be understood and implemented over time even as officials responsible for compliance change
 - Having written post issuance compliance procedures may allow for more favorable settlement treatment from the IRS
 - 1) Designate a Compliance Officer
 - Assign responsibility for monitoring
 - Include training with regard to tax and disclosure requirements
 - 2) Retain accurate records

Post-Issuance Tax Compliance Policy

- 3) Implement procedures reasonably expected to timely identify and timely correct noncompliance
 - Integrate monitoring of tax law compliance with existing accounting systems (for example, use special coding on a ledger to review sales, leases or contracts involving bond financed property)
 - Use a compliance checklist
 - Due diligence at regular intervals
 - Principal and interest payment dates are good benchmarks
 - Self-help remedial actions may only be taken within specified time frames.
- 4) Report compliance efforts to elected officials (annually)

Post-Issuance Compliance — Securities Law

Securities Exchange Act of 1934

Municipal securities are exempt from the registration and reporting requirements but are subject to the anti-fraud provisions of Section 10(b) and SEC Rule 10b-5.

Section 15(b) requires municipal securities brokers and dealers to register with the SEC and subjects them to the rules of the Municipal Securities Rulemaking Board (MSRB).

Primary Market Disclosure

The official statement is a document prepared by, or on behalf of, the issuer in connection with a primary offering of its bonds.

The official statement discloses all material information on the offering for potential investors.

- Main source of anti-fraud liability in a bond transaction
- Obligation for the accuracy and completeness of the disclosure lies with the issuer
 - Experts may assist, but cannot completely discharge, the issuer's obligation
- Although an official statement is not legally required for a private placement, some sort of disclosure document (e.g., term sheet) is usually prepared and disseminated
- Statements in a term sheet are subject to federal securities anti-fraud laws

Secondary Market Disclosure

Continuing Disclosure Undertaking (CDU)

- SEC Rule 15c2-12
 - Requires an underwriter to enter into an agreement with issuers to provide audited financial information, other financial information (possibly) and event disclosures to the market
 - SEC believes this information is important for market transparency and to promote a fair and efficient market

Method of Filing

- Filings must be made electronically at the MSRB's online portal (EMMA)
- Recent focus on timeliness of EMMA filings

CDU Filing Requirements

If new issue is sold directly to an investor (*i.e.*, private placement): No CDU (generally)

If new issue is less than \$1,000,000: No CDU

If new issue is at least \$1,000,000 and issuer has less than \$10,000,000 of debt, issuer must agree to provide:

- Audited financial statements, annually
- Reportable events, within 10 days of occurrence

If new issue is at least \$1,000,000 and the issuer has over \$10,000,000 of debt, issuer must agree to provide:

- Annual financial information, annually
- Audited financial statements, annually
- Reportable events, within 10 days of occurrence

CDU Filing Requirements (continued)

Annual Financial Information:

- Defined in reference to certain information and charts in the Official Statement, such as:
 - Debt Service Extension Base (DSEB)
 - Financial Information and Economic Characteristics: Trend of EAV, Tax Rates, Tax Extensions and Collections, Outstanding Debt, Debt Ratios
 - Summary of Operating Funds: Changes in General and Recreation Fund Balance, General and Recreation Fund Revenue Sources

Audit (and AFI, if applicable) must be filed with EMMA; filing deadline is usually 210 days after fiscal year close

Reportable Events

- Must be filed within 10 business days after the occurrence of the event
- Most common:
 - Rating changes
 - Bond calls
 - Payment delinquencies
 - Non-payment defaults
 - Incurrence of financial obligation or agreement to covenants, events of defaults, remedies, priority rights that affect security holders**
 - Default or other event related to a financial obligation**
 - Specifically, a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation, any of which reflect financial difficulties.

**Only applies to obligations issued after February 27, 2019

Consequences for Failure to Comply with CDU

Bondholders may sue for specific performance

Rule 15c2-12 requires issuers to disclose CDU non-compliance in official statements (five-year look back)

May impact access to market or result in increased interest rates on new issuances

Issuers that fail to make CDU filings may also face SEC action for other statements that reach the market, if materially misleading

CDU Post-issuance Compliance Checklist



Know your CDU filing requirements and deadlines



Implement policies and procedures and training for bond issuance and post issuance compliance



Identify individuals responsible for CDU items and have a succession plan



For annual filings, consider including the required tables in your audit



For annual filings, consider hiring a third-party dissemination agent



Subscribe to EMMA for email reminders

SEC Enforcement Actions and Takeaways



About the SEC

Advisory Committees

Commissioners

Contact

Diversity and Inclusion

Division and Office
Directors

Divisions and Offices

Privacy and Security

Regional Offices

Reports and Publications

SEC and Markets Data

Securities Laws

Mission



Recent Municipal Securities Enforcement Actions

- [SEC Files Settled Fraud Charges Against New Orleans-Based Auditor and Its Principal](#) (September 29, 2023)
- [SEC Charges Municipal Advisor and Its Principal with Breach of Duty of Care](#) (September 25, 2023)
- [SEC Charges Fifth Third Securities, Inc. for Violating Municipal Bond Disclosure Law](#) (July 18, 2023)
- [SEC Charges Municipal Advisor with Failing to Register with the Commission](#) (June 30, 2023)
- [In the Matter of Keybank Capital Markets Inc.](#) (March 7, 2023)
- [SEC Charges PNC Capital Markets LLC for Violating Municipal Bond Disclosure Law](#) (December 21, 2022)
- [SEC Charges Four Investment Advisers for Pay-To-Play Violations Involving Campaign Contributions](#) (September 15, 2022)
- [SEC Charges Loop Capital Markets in First Action against Broker-Dealer for Violating Municipal Advisor Registration Rule](#) (September 14, 2022)
- [SEC Charges Four Underwriters in First Actions Enforcing Municipal Bond Disclosure Law](#) (September 13, 2022)
- [SEC Charges Municipal Advisor and Broker to Charter Schools With Failing to Register With The Commission](#) (September 9, 2022)
- [SEC Charges Former Texas City Official for Falsifying City's Financial Documents](#) (June 16, 2022)
- [SEC Charges Rochester, NY, and City's Former Executives and Municipal Advisor with Misleading Investors](#) (June 14, 2022)
- [SEC Charges Louisiana Town and Former Mayor with Fraud in Two Municipal Bond Deals](#) (June 2, 2022)
- [SEC Charges Texas School District and its Former CFO with Fraud in \\$20 Million Bond Sale](#) (March 16, 2022)

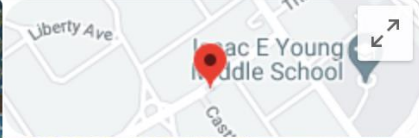
City of Harrisburg (2013)

- Harrisburg guaranteed \$260 million of debt issued to finance improvements to an incinerator
- From 2009-2011, Harrisburg failed to comply with an existing CDU
- As a result, investors had to rely on other statements from Harrisburg, including information on its website, 2009 State of the City address and annual and mid-year fiscal reports, even though such information was not “explicitly intended” for investors
- In the view of the SEC, this available information was materially misleading
- Cease and desist order – no financial penalties

City of Miami (2013)

- SEC charged the City and budget director with violations of the anti-fraud provisions of securities laws and filed a complaint in federal court
- At issue were transfers
 - Transfers from capital projects fund to general fund
 - Purpose was allegedly to mask losses in the general fund/maintain bond rating
- SEC further alleges the City and budget director misrepresented and concealed the transfers
- CDU filings during this time should have included transfers

College of New Rochelle



[See photos](#)[See outside](#)

Permanently closed 

The College of New Rochelle

College in New Rochelle, New York

The College of New Rochelle was a private Catholic college with its main campus in New Rochelle, New York, but also in Australia, England, and Germany. It was founded as the College of St. Angela by Mother Irene Gill, OSU of the Ursuline Order as the first Catholic women's college in New York in 1904. [Wikipedia](#)

Address: 29 Castle Pl, New Rochelle, NY 10805

Acceptance rate: 72% (2010)

President: [Dorothy Escribano](#)

Undergraduate tuition and fees: 29,100 USD (2011 – 12)

Tax ID: 13-1740447

Ceased operations: 2019

Colors: White, Blue

Motto



Gpa



College of New Rochelle

Legal Actions

- SEC enforcement action against Controller of the College of New Rochelle
- Federal criminal charges against the Controller

Accused of

- Misappropriating funds for the purpose of improving appearance of financial health in financial statements
- Distributing such incorrect financial statements to investors (through annual securities filings)

Charged With:

- Securities fraud

Outcome

- Pleaded guilty, sentenced to 3 years in prison

Sweetwater Union High School District



Large High School District in Chula Vista, California



Offering at issue: \$28 million of general obligation bonds



Issue

Material misstatements in an official statement related to budget projections (did not account for a 3.75% salary increase for employees) and failing to discontinue use of budget projections when actual results were worse



Result

CFO Paid \$28,000 Penalty and agreed not to participate in a municipal bond offering in the future

District settled with the SEC

Town of Sterlington, Louisiana

Population: 1,980

Offerings at Issue:

- 2017AB Bonds – Total par of \$4.0 million
- 2018 Bonds – Total par of \$1.8 million

Sold in Private Placements

Issue

- Overstated water/sewer customers and revenue projections

Trends in SEC Enforcement Actions

- Emphasis on issuer controls and procedures
- Willingness to pursue anti-fraud charges against negligent (not just intentional) disclosure failures
- Willingness to pursue fraudulent statements in documents or statements that are not provided to investors
- Emphasis on individual liability for involvement in fraud



Questions and Answers

We thank you for your time!

You've Issued Your Bonds—Now What?

Thank you for attending!

Tom Reedy
Managing Director
Stifel Nicolaus & Company, Incorporated
(312) 423-8245
reedyt@stifel.com

Kent Floros
Partner
Chapman and Cutler LLP
(312) 845-3723
floros@chapman.com

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

© 2024 Chapman and Cutler LLP

Disclosure

MSRB Rule G-23 Disclosure:

Stifel, Nicolaus & Company, Incorporated (“Stifel”) has prepared the attached materials. Such material consists of factual or general information (as defined in the SEC’s Municipal Advisor Rule). Stifel is not hereby providing a municipal entity or obligated person with any advice or making any recommendation as to action concerning the structure, timing or terms of any issuance of municipal securities or municipal financial products. To the extent that Stifel provides any alternatives, options, calculations or examples in the attached information, such information is not intended to express any view that the municipal entity or obligated person could achieve particular results in any municipal securities transaction, and those alternatives, options, calculations or examples do not constitute a recommendation that any municipal issuer or obligated person should effect any municipal securities transaction. Stifel is acting in its own interests, is not acting as your municipal advisor and does not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934, as amended, to the municipal entity or obligated party with respect to the information and materials contained in this communication.

Stifel is providing information and is declaring to the proposed municipal issuer and any obligated person that it has done so within the regulatory framework of MSRB Rule G-23 as an underwriter (by definition also including the role of placement agent) and not as a financial advisor, as defined therein, with respect to the referenced proposed issuance of municipal securities. The primary role of Stifel, as an underwriter, is to purchase securities for resale to investors in an arm’s-length commercial transaction. Serving in the role of underwriter, Stifel has financial and other interests that differ from those of the issuer. The issuer should consult with its’ own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate.

These materials have been prepared by Stifel for the client or potential client to whom such materials are directly addressed and delivered for discussion purposes only. All terms and conditions are subject to further discussion and negotiation. Stifel does not express any view as to whether financing options presented in these materials are achievable or will be available at the time of any contemplated transaction. These materials do not constitute an offer or solicitation to sell or purchase any securities and are not a commitment by Stifel to provide or arrange any financing for any transaction or to purchase any security in connection therewith and may not be relied upon as an indication that such an offer will be provided in the future. Where indicated, this presentation may contain information derived from sources other than Stifel. While we believe such information to be accurate and complete, Stifel does not guarantee the accuracy of this information. This material is based on information currently available to Stifel or its sources and is subject to change without notice. Stifel does not provide accounting, tax or legal advice; however, you should be aware that any proposed indicative transaction could have accounting, tax, legal or other implications that should be discussed with your advisors and /or counsel as you deem appropriate.

DISCLAIMERS AND COPYRIGHT NOTICE

The information and opinions conveyed at IGFOA conferences, institutes, and seminars are obtained from sources believed to be reliable, but IGFOA makes no guarantee of accuracy. Opinions, forecasts and recommendations are offered by individuals and do not represent official IGFOA policy positions. Nothing herein should be construed as a specific recommendation to buy or sell a financial security.

The IGFOA and speakers specifically disclaim any personal liability for loss or risk incurred as a consequence of the use and application, either directly or indirectly, of any advice or information presented herein. Unless otherwise indicated, all materials are copyrighted by the Illinois Government Finance Officers Association. The enclosed materials may not be reprinted, reproduced, or presented in any format without express written authorization. © 2024

Illinois Government Finance Officers Association
800 Roosevelt Road, Building C, Suite 312
Glen Ellyn, IL 60137
Phone: 630-942-6587
Email: info@igfoa.org
Visit <http://www.igfoa.org>