

CDIAC

**CALIFORNIA
DEBT AND
INVESTMENT
ADVISORY
COMMISSION**

**15TH ANNUAL
PRE-CONFERENCE AT THE
BOND BUYER CA PUBLIC FINANCE
CONFERENCE**

**THE RELATIONSHIP BETWEEN
ISSUERS AND THEIR CONSULTANTS
IN THE POST-DODD-FRANK ERA**

September 20, 2016

SESSION ONE

RECENT ENFORCEMENT ACTIONS AGAINST ISSUERS AND PUBLIC OFFICIALS

Presented by

Robert Doty, President and Proprietor, AGFS, Annapolis, MD
Elaine Greenberg, Partner, Greenberg & Taurig

EXPANDING MUNICIPAL SECURITIES ENFORCEMENT

Profound Changes for Issuers & Officials

Presented to
California Debt & Investment Advisory Commission
Bond Buyer California Pre-Conference

September 20, 2016

SEC NON-MCDC ENFORCEMENT SINCE EARLY 2013

- **NON-MCDC ENFORCEMENT ACTIONS (3 ½ Years)
AGAINST—**

- **18 State or Local Governmental Entities**

- **16 Local Officials**

- **Includes 4 Actions Pending Against 6 Local Governmental
Entities & 6 Officials**

- **CONTRAST:
IN 14 YEARS FROM 1999 THROUGH 2012—**
 - **11 State or Local Governmental Entities**
 - **10 Local Officials**

SINCE EARLY 2013

- **Two States—Illinois & Kansas**
(Not First—New Jersey in 2010,
Add Hawaii and Minnesota After MCDC)
- **State Agency—Rhode Island Commerce Corp.**
(formerly, Economic Development Commission) (in
progress)
(Not First—Massachusetts Turnpike in 2003,
After MCDC, 10 State Agencies)

**COMMISSION GOING TO
FEDERAL DISTRICT COURT
MORE OFTEN
(As Opposed to Administrative Proceedings)**

**Will Lose Some, But Also Will Produce Court
Decisions as Precedent**

**More Remedies in Federal Court
(e.g., Control Person Liability, Injunctions, Emergency
Relief to Halt Ongoing Conduct)**

To Date, Quite Successful

NOTABLE “FIRSTS” & OTHER DEVELOPMENTS

FIRST TIME:

**Emergency Injunction Against Issuer To Halt
Bond Offering in Progress**

**(City of Harvey, Illinois)
(Pacific Genesis, Underwriter, in 2001)**

FIRST TIME:

**Prohibitions Against Issuers Issuing Bonds in Future
(Without Satisfying Conditions Precedent)**

**UNO Charter School Network—5 Years;
Conditions: Policies, Training, Responsible Official, & More**

**City of Harvey, Illinois—3 Years;
Condition: Independent Disclosure Counsel**

**Allen Park, Michigan—2 Years;
Conditions: Disclosure of Order, Certification After Consultation with
Disclosure Counsel**

FIRST TIME:

Civil Penalties Against Issuers

**(Greater Wenatchee, Washington, Regional Events Center
Public Facilities District—\$20,000;
Also Operator of Center and Its President—\$10,000 Each)**

(Westlands Water District—\$125,000)

FIRST TIME:

**SEC Won in District & Appellate Courts on Issue
of
Qualified Immunity of Public Officials**

**Basis: SEC Seeking
Injunction & Civil Penalty
vs. Damages**

(SEC v. Miami's Budget Director)

FIRST TIME:

Bars Against Officials—No Future Bond Issues

**Includes Two Mayors
(One Still Sitting—Can't Certify Bond Disclosures)**

Includes Bars Against Work in Industry

**FIRST TIME:
Bars Against Officials**

- **City of Harvey, Illinois—
Sitting Mayor & Former Comptroller**
- **City of Allen Park, Michigan—
Former Mayor & City Manager**
- **Rhode Island Economic Development
Commission—Former Executive Director &
Deputy Director**
- **United Neighborhood Organization of
Chicago—Former CEO**

FIRST TIME:

Civil Penalties Against State Agency Officials

**(Executive Director and Deputy Director of Rhode
Island Commerce Commission—\$25,000 Each)**

INCREASED USE OF CIVIL PENALTIES AGAINST OFFICIALS

\$180,000 Against 8 Officials

- **City of Harvey, Illinois—Sitting Mayor—\$10,000**
Former Comptroller—\$30,000 (plus disgorgement & interest)
- **City of Allen Park, Michigan—Former Mayor—\$10,000**
- **Westlands Water District—**
General Manager/General Counsel—\$50,000
Former Assistant General Manager—\$20,000
- **Rhode Island Economic Development Commission—**
Former Executive Director—\$25,000
Former Deputy Director—\$25,000
- **United Neighborhood Organization—Former CEO—\$10,000**

CONTRAST:

Prior 15 Years—

**5 Officials (in two actions) \$85,000
(Primarily San Diego Officials)**

**LARGEST CIVIL PENALTY TO DATE AGAINST
ISSUER OFFICIAL—\$50,000**

Double Prior Highest

(Westlands, California, Water District)

FIRST TIME:
BIG DEAL

**“Control Person” Liability for Issuer Officials
(Joint & Several with Primary Violator)**

- **Mayors of—
Harvey, Illinois
Allen Park, Michigan**
- **Shift in Burden of Proof**
- **SEC Need Only Prove Control, Not Knowledge**
- **Participation in Fraud Unnecessary**

CONTROL PERSON LIABILITY:

- **To Establish Successful Defense,
“Control Persons” Must Prove—**
 - ❖ **“Good Faith”**
—and—
 - ❖ **Did Not “Directly or Indirectly”
Induce Action of Primary Violator**

CONTROL PERSON LIABILITY:

- **Poses Significant New Risks for Community Leaders—Mayors, Board Chairs**
- **Absolute “Control” Not Required**
- **Defense May Require Exercise of Oversight to Evidence “Good Faith”**
- **If Policies/Procedures Adopted & Implemented, May Be Helpful**

FIRST TIME:
ANOTHER BIG DEAL

**Issuer Former CEO Fined and Barred
for NOT Reading Official Statement He Signed**

**OS Contained Material Misstatements/
Omitted Material Information**

Only Charged with Negligence

Not Charged with Knowledge of Misrepresentations

(CEO of United Neighborhood Organization of Chicago)

FIRST TIME:

**Action Against Issuer for Information on Website
(NOT Official Statement or Continuing Disclosure Filing)**

Information on General Webpage (Not Investor Page)

**Including Mayor's Political Speech
(Annual State of City—Posted on General Webpage)**

(City of Harrisburg, Pennsylvania)

HARRISBURG:

Implications for Disclosure Regarding Outstanding Obligations

**Once Issuer Speaks About Obligations, Must Speak Without Material
Misstatements or Omissions
(*e.g.*, on Website, in Official Statements,
Annual Financial Information Filed at EMMA)**

HARRISBURG:

Illustrates Point That ALL Material Obligations Should Be Disclosed

**Including
“Bank Loans”
Non-Bank Loans,
ALL Material Obligations
(e.g., Judgments, Contingent Liabilities,
Contractual Liabilities)**

FIRST TIME:

**Action Against Issuer with Respect to Information in Documents
Investors Never Saw**

**Tax Certifications to Bond Counsel
& Pool Bond Issuer Regarding Private Use of Project**

(City of South Miami, Florida)

SOUTH MIAMI:

**Illustrates Importance of Internal Issuer Controls
(Four Finance Directors—Not Trained)**

**Unsophisticated Issuer—
No Excuse**

Many Issuers Need Professionals to Assist

**Compliance with Tax Rules, Continuing Disclosure & Bond
Documents**

FIRST TIME:

Independent Conflicts Monitor

(UNO Charter School Network)

FIRST TIME:

Governmental Issuer Alleged to Have Failed to Disclose—

Information Regarding Private Conduit Borrower

In Credit Enhanced Bond Issue

**(Rhode Island Commerce Commission—Pending)
(Two Officials Settled—Barred & Civil Penalties)**

FIRST TIME:

**Liability in True Private Placement
(Under Section 4(a)(2) of Securities Act of 1933)**

Bonds Offered/Sold Solely to Sophisticated Investors

Investment Letters

Action Against State Agency/Officials

Placement Agent's Motion to Dismiss Denied

**(Rhode Island Commerce Commission—Pending)
(Two Officials Settled—Barred & Civil Penalties)**

FIRST TIME:

Local Issuer Counsel

**(Westlands, California, Water District &
Ramapo, New York)**

FIRST TIME:

**Action Against Issuer Already Subject to
Cease-and-Desist Order**

(City of Miami, Florida)

FIRST TIME:

**Federal Court Trial and Jury Verdicts Against
Issuer and Issuer Official**

(City of Miami, Florida)

“REASONABLE” RELIANCE ON PROFESSIONALS

Four Factors Applied by Courts:

- **Complete Disclosure to Professional Regarding Issue**
- **Seeking Professional Advice as to Appropriateness of Conduct
(Participation in Transaction Inadequate)**
- **Receipt of Advice that Conduct Is Appropriate
(Not Merely Negative Assurance)**
- **Reliance on Advice in Good Faith**

Miami Jury Verdict Found None of the Factors Present

FIRST TIME:

**Announced Intention to Coordinate with
Justice Department**

**(City of Ramapo, New York)
(Criminal Action Includes Local Counsel)**

**PENDING COURT CASES:
(SEC Seeking Broad Remedies Against Issuers & Officials)**

City of Miami & Former Budget Director

**Southern California Logistics Airport Authority,
City of Victorville, & Assistant City Manager**

**Rhode Island Commerce Commission
(Formerly, Rhode Economic Development Commission)
(Former Executive Director & Former Deputy Director
Settled)**

**(Asserting Governmental Responsibility for Private Borrower
Information in Credit Enhanced Bond Issue)**

**City of Ramapo, New York, Ramapo Local Development
Corp.,
Town Supervisor/President of Development Corp., Town
Attorney, former Executive Director of Development
Corporation/Assistant Town Attorney, & Town's Deputy
Finance Director**

COMMON PROBLEM AREAS:

- **Overly Optimistic Information Regarding Economic Development Projects—**
(*e.g.*, Wenatchee Events Center, Allen Park Movie Studio, Ramapo Baseball Stadium, Rhode Island EDC Private Online Game Company, Harvey Holiday Inn)
- **Assumptions & Other Information Supporting Projections & Expert Reports—**
(Wenatchee Events Center, Public Health Trust)

COMMON PROBLEM AREAS:

- **Stale Information**
(Allen Park, Public Health Trust)
- **Conflicts of Interest**
(UNO Charter School Network, Harvey)
- **Insufficient Internal Controls**
(South Miami, Public Health Trust)
- **Misleading Risk Factors**
(Rhode Island Commerce Commission)

**MAJOR SEC OUTCOMES:
(MCDC & Non-MCDC)**

**Large Numbers of Issuers Adopting
Policies & Procedures
& Staff Training**

**Virtually All Underwriters (96% of Bonds)
Required to Employ Consultants Regarding
Due Diligence Practices**

Condition of MCDC Settlements

**Achieved a Re-Focused Review of Marketwide Practices
by Issuers & Underwriters**

ISSUER POLICIES & PROCEDURES:

Potential to Become Market Practice

**Control Persons Might Point to Adoption
as Evidence of “Good Faith”**

**Greater Risk in Enforcement,
If Not Implemented**

BUT, If Adopt, BETTER FOLLOW

ISSUER POLICIES & PROCEDURES:

Many Issuers Need Professionals to Assist

BUT Issuers Are Responsible for Official Statements

Officials Who Sign MUST Read and Understand

ISSUER POLICIES & PROCEDURES:

**SEC Often Accepts Lighter Sanctions
for Careless, Negligent Issuers
(Section 17(a)(2) & (3) of Securities Act of 1933)**

IF

**Issuers Offer to Implement Policies & Procedures,
Designate Responsible Officials, & Train Staff**

**NEXT STEPS
(MCDC)**

Potential Actions Against Non-Self-Reporting Issuers & Underwriters

**Potential Actions Against Issuer Officials
& Individual Underwriter Officers**

Potential Actions Against Professionals

If So, Sanctions Likely To Be More Severe

THE MARKET'S FUTURE

**Regulation by Enforcement
(as Well as Through Rule 15c2-12)**

Tower Amendment Irrelevant

Legislative Trade-Off in the 1970s

THE END

SESSION TWO

THE ROLE OF REGULATORS AND RULE-MAKERS IN THE MARKET: THE CARROT AND THE STICK

Moderator: Ritta McLaughlin, Chief Education Officer, MSRB

Monique Winkler, Assistant Director, Enforcement/Public Finance, SEC

Todd Mitchell, Group Manager, Office of Tax Exempt Bonds, IRS

David A. Vaudt, Chairman, GASB

Leslie Norwood, Managing Director and Associate General Counsel, SIFMA

MORNING BREAK 10:15 AM – 10:30 AM

Session Three

MUNICIPAL ADVISORS: NEW STANDARDS AND RESPONSIBILITIES

Moderator: Susan Gaffney, Executive Director, National Association of Municipal Advisors

Dave Sanchez, Senior Counsel, Norton Rose Fulbright US LLP
David Leifer, Senior Managing Director, KNN Public Finance
Terry L. Maas, Managing Director, HillTop Securities, Inc.



Session Overview

- Implementation MSRB Rule G-42 and Other Rules Governing Municipal Advisors
- Issuers and Municipal Advisor Regulations
- Interacting with MAs in the Current Regulatory Environment
- Impact On Other Professionals



MA Regulations and Issuers

- MAs Have a Federal Fiduciary Duty to Client
 - ▣ Duty of Care
 - ▣ Duty of Loyalty
- MAs Must Be Registered with the SEC and MSRB
- MAs Must Meet Qualification Standards by September 2017 (Series 50)
- MAs Must Document the Relationship with Client and Scope of Services
- MAs Must Disclose Conflicts of Interest to Client
- MAs Must Consider Financing Recommendations for Issuers in Light of Whether the Financing is *Suitable* for the Client
- MAs May Send Client/Issuer More “Paperwork” To Meet Their Compliance Obligations



MA Regulations and Issuers

- Client/Issuer Should Make Sure MA is Registered with SEC and MSRB
- Client/Issuer Should Make Sure (by 9/17) That MA Has Passed Series 50 Exam
- Client/Issuer Should Negotiate The Scope of Services for MA
- Client/Issuer Should Be Receptive to Receiving Information From MAs, and Review Conflict of Interest Disclosures
- Client/Issuer Has No SEC/MSRB Regulatory Obligations To Sign Any Documents From MAs or Use MAs in a Transaction
 - ▣ Practically Speaking, Issuers May Have/May Be Asked to Sign Contract with MAs Regarding Services to be Rendered In Order for MAs to be in Compliance with MSRB Rule G-42



MA Rule: Highlights

- Regulatory Framework Over Municipal Advisors
 - ▣ Fiduciary Duty
 - ▣ Other Rulemaking Similar to Broker/Dealer Rules
- Only Municipal Advisors May Give Advice to a Client/Issuer Unless Certain Exceptions Apply
 - ▣ Responding to an RFP
 - ▣ Client/Issuer Hires MA and Produces an IRMA Letter
 - ▣ Underwriter Has Been Hired (with some limitation)
- IRMA Letters: The Good, The Bad, and the Ugly
- Interacting With Other Professionals
- MA Duties
- Going Forward



Putting Policies Into Practice

- Differences Between “Independent” MAs & Broker/Dealer MAs
- Roles of MAs
- What Has Changed In Client Interactions Since the Regulations?
- What Will Change In Client Interactions Since the Regulations?
- The Development and Use of “G-42 Letters”
- The Development and Use of “IRMA Letters”
- What Are Conflicts of Interest and Why Do They Matter to Clients?
- What Does “Suitability” Mean For Actual Clients?
 - Tiered Approach Depending on Client



Putting Policies Into Practice

- MA's Role When Helping Client/Issuer Select and Work With Other Professionals
- MA's Role in Bank Loan Transactions
- Bond Ballot Initiatives and MAs

The Rules of the Rule!

- G-2: Standards of Professional Qualification
- G-3: Professional Qualification Requirements
- G-5: Disciplinary Actions
- G-8: Books and Records
- G-9: Preservation of Records
- G-17: Conduct of Municipal Securities and MA Activities
- G-23*: Activities of Financial Advisor (No Role Switching)
- G-24*: Use of Ownership Information Obtained in Fiduciary or Agency Capacity
- G-27*: Supervisory Obligations of Broker-Dealers
- G-32*: Disclosure of Primary Offering
- G-37*: Political Contributions
- G-38*: Solicitation of Municipal Securities Business
- G-42: Duties of MAs
- G-44: Supervisory and Compliance Obligations for Municipal Advisors

Resources

CDIAC: MA Rule Resource Page

<http://www.treasurer.ca.gov/cdiac/mmra/ma.asp>

GFOA: Primer-Municipal Advisor Rulemaking and Issuers

<http://gfoa.org/gfoa-primer-municipal-advisor-rulemaking-and-issuers>

MSRB: Municipal Advisor Page

<http://www.msrb.org/Regulated-Entities/Municipal-Advisor-News.aspx>

LUNCHEON 12:00PM – 12:45 PM

JOIN CDIAC FOR LUNCH IN BALLROOM I

Keynote Presentation:

The Honorable John Chiang, CA State Treasurer

Session Four

UNDERWRITERS AND BROKER/DEALERS:

How Has The Regulatory Regime Changed for Underwriters in the Past Five Years?

Moderator: Daniel Deaton, Partner, Nixon Peabody LLP

Stephen Heaney, Director of Public Finance, Stifel Nicolaus & Company, Inc.

Peg Henry, Deputy General Counsel, Stifel, Nicolaus & Company, Inc.

Chris Mukai, Managing Director, Citi

Andrew Sears, Executive Vice President and General Counsel,

George K. Baum & Co.

PROTECTION OF INVESTORS

□ **Risk Alert (March 2012)**

□ What was the risk alert?

- *“the [Examination Office of the SEC] has observed instances where municipal underwriters have not maintained, nor did they require the creation and maintenance of, adequate written evidence that they complied with their due diligence obligations, including those under Rule 15c2-12 and applicable Commission interpretive guidance. Indeed, some firms have asserted that it is their specific policy not to maintain any due diligence records and have stated that ‘it is not industry practice’ or that they are following advice from outside counsel.”*
- Warned dealers that they need to maintain documentation that they have satisfied their due diligence obligations.

□ Why was this such a big deal?

□ What did it teach us?

- Importance of documentation.
- Introduction of examinations as significant business risk concern.

PROTECTION OF INVESTORS

- ***Wenatchee Order (November 2013)***
 - What happened in Wenatchee?
 - Financed project was a proposed minor league hockey arena.
 - Financing had fallen apart before.
 - Projections used in offering document had been questioned and then made to be more optimistic at the request of the city.
 - Banker was introduced to the transaction a mere weeks before it went to market and performed minimal due diligence.
 - Why is it important?
 - Negligence based enforcement action against underwriter and banker
 - Applied the emphasis of negligence-based actions to dealers in addition issuers
 - *What did this teach us?*
 - The SEC will enforce the due diligence obligations of underwriters even where a bondholder has not lost a single dollar.
 - The SEC will enforce the due diligence obligations of underwriters not only when they act recklessly but also if they do not show that they are being careful.

PROTECTION OF INVESTORS

- ***Recent Jury Verdict in City of Miami (September 2016)***
 - Recent jury verdict in the SEC's action against the City of Miami
 - Jury found that the City of Miami and its former budget director violated the Federal antifraud laws because it executed a series of transfers from its Capital Projects Funds to its General Fund, which falsely inflated the General Fund balance and maintained \$100 million in reserves in the General Fund, and ultimately led to more favorable ratings on its bond offerings.
 - Jury also found that the City of Miami failed to disclose relevant facts and seek advice from its auditing firm at the time.
 - ***The SEC is using its enforcement authority to make fundamental changes in the municipal securities market, and we live in a climate where the SEC does not hesitate to open enforcement actions against issuers and underwriters – even in circumstances where bondholders are not losing money and the bonds are highly rated.***

PROTECTION OF INVESTORS

- **MCDC Initiative (March 2014-December 2014-??)**
 - What happened?
 - Do we even need to go into that?
 - What did the dealers uncover about underwriter due diligence during the MCDC Initiative?
 - Revealed numerous instances where continuing disclosure due diligence was not conducted.
 - Revealed a lot of communication concerns between bankers and underwriter's counsel.
 - *What did this teach underwriters?*
 - A lot of assumptions were being made.
 - Need for a more-systematic process for due diligence generally—not just continuing disclosure (“canary in a coal mine”).

PROTECTION OF ISSUERS

□ **Rule G-17 Disclosures (August 2012)**

□ What are these disclosures?

- The MSRB provided an interpretation of its dealer fair dealing rule (Rule G-17) that required underwriters to provide to issuers disclosures concerning role and responsibilities of the underwriters, their conflicts of interests and the material financial risks and financial characteristics of complex transactions they recommend.
- The interpretative notice also imposed specific requirements that underwriters deliver these disclosures early in the transaction process (some are required earlier than others depending on the kind of disclosure).

□ *How did this impact underwriters?*

- It has required dealers to implement compliance systems to ensure that these disclosures are properly prepared and timely delivered on each transaction.
- It has increased the amount of paper work dealers send to issuers.
- It has provided a needed structure to disclose to issuers material factors that affect them like conflicts of interest and how risks associated with complex financings.

PROTECTION OF ISSUERS

- ***Municipal Advisor Rule (September 2013)***
 - What is the Rule and why did it matter for underwriters?
 - The Final Rule the SEC adopted concerning municipal advisors created a “facts and circumstances” test to define when a person becomes a “municipal advisor” for purposes of the brand new regulatory regime.
 - If a person becomes a municipal advisor with respect to any transaction, that person will be subjected to a host of rules including a fiduciary duty to municipal entities.
 - The SEC was clear that a dealer could not be both a municipal advisor and an underwriter with respect to any municipal securities transaction because it would constitute a breach of that fiduciary duty.
 - Underwriters are required to find an exception to the Rule
 - The effect of the Rule is that dealers need to secure an exemption for each transaction and make sure they are not municipal advisors to municipal entities on any transaction or they cannot underwrite the transaction.
 - Most underwriters looked to three exemptions: Underwriter exclusion, RFP exemption or the IRMA exemption.
 - *What is the effect of the Rule on the relationships between issuers and underwriters?*

Session Five

ISSUER PERSPECTIVE: HOW ARE THEY DOING IN THE WAKE OF ALL THIS CHANGE?

Moderator: Jay M. Goldstone, Managing Director, MUFG and GFOA Debt
Management Committee Technical Advisor

Deborah Cherney, Deputy General Manager, Eastern Municipal Water District
Scott P. Johnson, Partner, State and Local Government Advisory Services,
Macias Gini & O'Connell LLP



2016 CDIAC Pre-Conference Issuer Perspective: How Are They Doing in the Wake of All This Change?

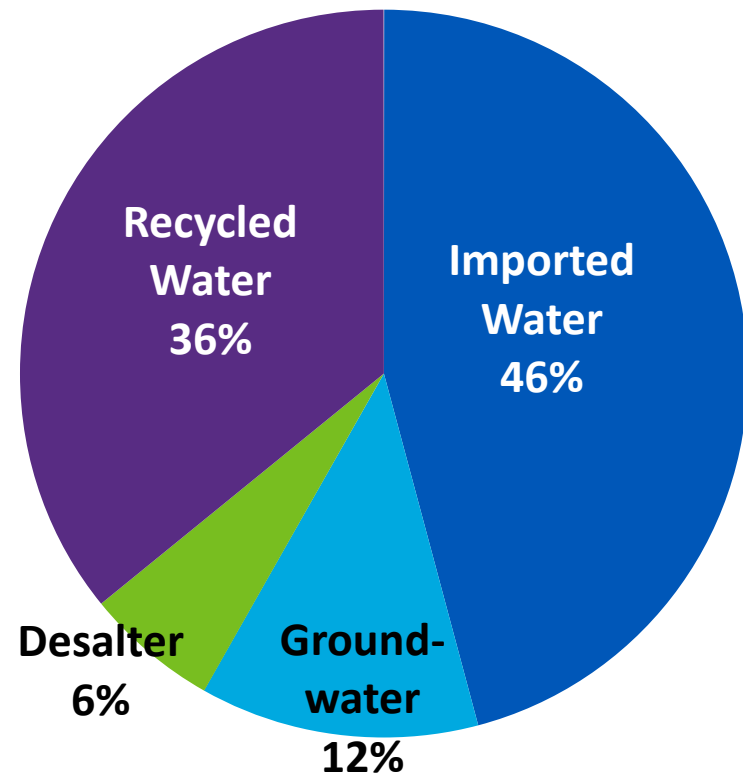
Debby Cherney

September 20, 2016

Overview


- Established in 1950
- Riverside County, California
 - High-growth area
 - Arid climate
- 555 square-mile service area
- Service area population of 795,000
- Full service agency providing **water, wastewater and recycled water service**:
 - 145,000 water connections
 - 237,000 sewer connections
- Serving seven cities and unincorporated areas

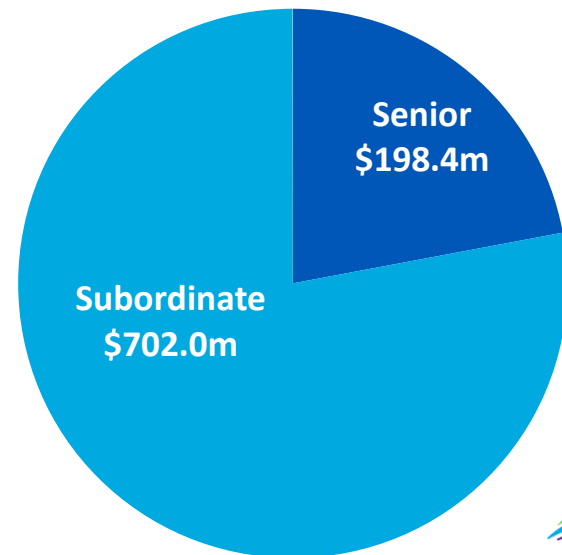
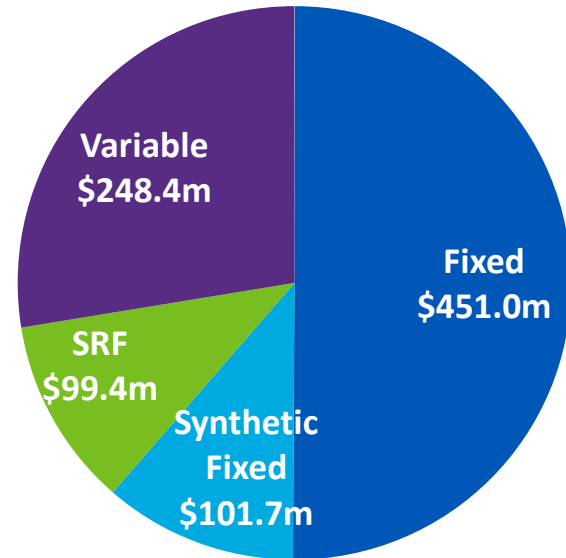
Calendar Year 2015
123,087 AF



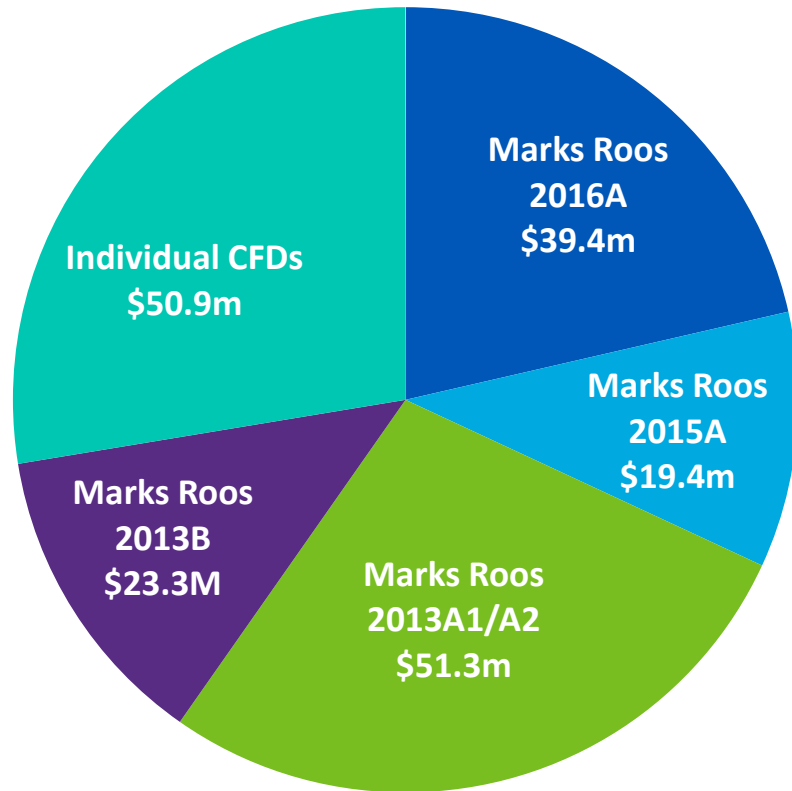
Source: EMWD 2015 Urban Water Management Plan

Utility Debt

- \$900.4 million outstanding as of 9/15/2016
- Senior Debt Ratings: AA+/Aa2/AAA 
- Subordinate Debt Ratings: AA/Aa3/AA+
- Fixed/Variable/SRF/Synthetically Fixed
- Significant efforts in last three years to optimize portfolio -- refundings & new money



Land Secured Debt – Community Facilities Districts



- 75 Community Facilities Districts formed since 2001
- \$184.3 million in debt outstanding
 - 60 CFD Improvement Areas
- 14,987 existing developed parcels
- Average par of outstanding individual CFDs: \$3.9 million
- Average par of outstanding Marks Roos pools: \$33.4 million
- Refunding savings totaled \$15.6 million since 2013
 - Highest average parcel savings \$663 per year
- Expected market activity: approximately 5 new transactions per year

During the Deals

- Engagement of Financing Team
 - Financial Advisors
 - Underwriters
 - Bond & Disclosure Counsel
 - Special Tax Consultants (land secured financings)
- G-17 Letters / Acknowledgments
- Disclosure
- Due Diligence
- Market Communications

Disclosure Practices & Due Diligence

- Entire Financing Team is involved
- Broad-based Review of OS/Appendix A
 - Fresh review every time
 - Virtually all departments are involved in our utility financing disclosures
 - Ongoing training and awareness
 - For land secured transactions, incorporating developers into the conversation
 - Developers increasingly hiring their own disclosure experts
- Due diligence calls are broader, take longer and have more participants

Communications

- Consistency across channels:
 - Investor Relations website
 - Board/Committee agenda packages (publicly available)
 - Rating Agency presentations
 - Investor roadshows
 - POS/OS
- Analyst/Investor inquiries
- Property owners



Contact Information

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2016 CDIAC Pre-Conference

Issuer Perspective: How Are They Doing in the Wake of All This Change?

Presented by:
Scott P Johnson, CPA, Partner



September 20, 2016

Issuer Perspective

- **Board and Management Involvement with Internal Controls and Risk Management**
- **The Finance Officer's Responsibilities**
- **GASB Reporting Requirements**
- **GFOA Best Practices – Continuing Disclosures**
- **Audit Procedures for Financial Audit Assertions**
- **Best Practices Example - San Jose Procedures**

Board and Management Involvement with Internal Controls and Risk Management

- **Renewed focus of Board and Senior Management on Risk Management/Oversight**
- **Risk Management Philosophy and Risk Appetite**
- **Understanding the Organization's Risk Management Practices**
- **Performing a Risk Assessment and Identify Key Risk Factors**
- **Developing a Risk Mitigation Plan**

The Finance Officer's Responsibilities

- Proper use of bond funds for capital purposes
- Projects listed, or “Like” projects allowed
- Account for proceeds and project expenditures
- Make debt service and related payments
- Establish controls to ensure proper use of proceeds
- Coordinating of project payments or bond draws with the Trustee
- Financial Statements and Continuing Disclosures

An Overview of Recent GASB

| No. | Title | Issued | Effective for Periods Beginning After |
|-----|--|-----------|---------------------------------------|
| 72 | Fair Value Measurement and Application | Feb 2015 | June 15, 2015 |
| 73 | Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68 | June 2015 | June 15, 2015 * |
| 74 | Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans | June 2015 | June 15, 2016 |
| 75 | Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions | June 2015 | June 15, 2017 |
| 76 | Hierarchy of Generally Accepted Accounting Principles for State and Local Governments | June 2015 | June 15, 2015 |
| 77 | Tax Abatement Disclosures | Aug 2015 | December 15, 2015 |
| 78 | Pensions Provided through Certain Multiple-Employer Defined Benefit Pension Plans | Dec 2015 | December 15, 2015 |
| 79 | Certain External Investment Pools and Pool Participants | Dec 2015 | June 15, 2015 * |
| 80 | Blending Requirements for Certain Component Units – an amendment of GASB Statement No. 14 | Jan 2016 | June 15, 2016 |
| 81 | Irrevocable Split-Interest Agreements | Mar 2016 | December 15, 2016 |
| 82 | Pension Issues an amendment of GASB Statements No. 67, No. 68, and No. 73 | Mar 2016 | June 15, 2016 * |

* Statement has multiple effective dates; earliest required date is presented above.



Specific GASB Reporting Requirements

- Pension Disclosures – GASB 68
- Financial Reporting for other Post-Employment Benefits – GASB 74 & 75
- Fair Value Measurement – GASB 72



GFOA BEST PRACTICES: Continuing Disclosure

- **Principal and interest payment delinquencies**
- **Non-payment related defaults**
- **Unscheduled draws on debt service reserves reflecting financial difficulties**
- **Unscheduled draws on credit enhancements reflect financial difficulties**
- **Substitution of credit or liquidity providers, or their failure to perform**
- **Adverse tax opinions or events affecting the tax-exempt status of the security**
- **Modifications to rights of security holders**



GFOA BEST PRACTICES: Continuing Disclosure

- **Bond calls and tender offers**
- **Defeasances or the termination of the rights and interests of bondholders under terms of the bond documents**
- **Release, substitution or sale of property securing repayment of the securities**
- **Rating changes**
- **Bankruptcy, insolvency or receivership**
- **Merger, acquisition or sale of all issuer assets**
- **Appointment of successor trustee**



Existing Audit Procedures Considered for Financial Audit Assertions

Review of Controls:

- Inquire with management regarding the monitoring process for bond covenants.
- Process to ensure punctual payments set forth in the bond payments schedule.
- Tracking system to ensure sufficient reserves set forth in the bond agreement.
- Proper books of record and accounts.

Best Practices Example-SanJose Procedures

- Annual Debt Report Publicly Issued and Posted on-line
- Continued disclosure and on-going monitoring to determine updates
- Bond Projects Reimbursement Procedures
 - Submittal by sponsoring department
 - Documentation reviewed by Treasury/Accounting
 - Finance Submits to Trustee for reimbursement
 - Funds received and posted to finance system in appropriate project/fund
 - Accounting reflected in financial statements and included in City's Comprehensive Annual Financial Report (CAFR)

Best Practices Example-SanJose Procedures (Continued)

- **GO Bond Program**
 - **Subject to Audit by External Auditors**
 - **Audit and Program Reports reviewed annually by Public Bond Oversight Committee at a public meeting**
 - **Oversight Committee report submitted to City Council**

- **SEC and IRS Audits**

Disclaimer

The views expressed in this presentation are those of the presenter and do not reflect the official policy or position of CDIAC, the Bond Buyer or Macias Gini & O'Connell LLP (MGO).

**Questions?
Let's Talk.**

CLOSE OF PROGRAM

Completion of Post Evaluations

General Conference Next Door at JW Marriott