

Prop. 39 bonds continuing disclosure compliance

Are you jeopardizing your district's ability to sell bonds or other debt?

By Dan Warden, Vicenti, Lloyd & Stutzman, LLP

Is your district required to meet continuing disclosure requirements?

If your district has outstanding bonds, Certificates of Participation (COPs), bond anticipation notes, Tax Revenue Anticipation Notes (TRANs) or other public debt issues with durations greater than nine months, the answer is yes. Your district has continuing disclosure requirements for each of these issues.

What is required? At the time your district issued a debt instrument, district officials contractually committed to continuing disclosure requirements for that particular issue. This requires submission of 1) annual financial reports and data by specified dates, and 2) notices of material events when they occur to the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access (EMMA) website (www.emma.msrb.org). EMMA is an electronic library of official statements and other reports that provides the public with free access to municipal financial data. While this mailing deals with annual required financial reports and data filings, watch for our next installment which will discuss notices of material events.

What are the consequences of non-compliance? Until 2010, bond underwriters and financial advisors were required only to verify that the district had contractually committed to meet continuing disclosure requirements. As of Dec. 1, 2010, underwriters are now required to verify that 1) the borrow-

ing district is in compliance with the requirements for continuing disclosure stated in lending contracts, and 2) that they have reasonable belief the district will continue to be in compliance before issuing new debt. *This means that you may not be able to issue new debt until you can demonstrate you are fulfilling your current continuing disclosure requirements and that you will do so in the future.*

There may be further consequences for non-compliance when the Securities and Exchange Commission (SEC) completes its current review and update of municipal debt industry regulations. An MSRB letter to the SEC in August 2011 recommended the SEC amend the rules as necessary to impose consequences on debt issuers (i.e., districts) for non-compliance.

Which financial reports and data need to be filed annually? Each debt issuance contract between a district and a lender lists specific reports and information that must be disclosed on an ongoing (most often, annual) basis. Districts are required to file these reports by the deadlines in the agreements. At a minimum, this includes the annual audit report conforming to GASB rules.

Information not generally included in the audit report may also be required. For example, bond issues may require annual filings of assessed valuations, tax delinquency factors, a listing of the 10 largest property taxpayers in the district, etc. Some of the agreements may also require additional filings such as budgets, enrollments, quarterly financial reports or other periodic information deemed useful to investors in assessing the safety of their debt investment.

If you use a dissemination agent,

the agent will either inform you of the reports and deadlines for you to file on the EMMA website or will request the reports and information from you to file on the EMMA website. Reports and information posted to the EMMA website must be in word searchable PDF format. If a district is not using a dissemination agent, it should establish a schedule and procedure to ensure the required filings are accomplished on time.

What if my district has not posted the required annual reports? If your district has not filed required documents, the district is in non-compliance. It would be prudent to consult your financial advisor before proceeding. While this may not be a complete list, posting the following may bring your district into compliance:

- File the delinquent reports on the EMMA website.
- File a notice indicating the delay in filing on the EMMA website.

Underwriters may take this information into account when deciding whether there is reasonable assurance that your district will comply in the future. However, district initiated steps to achieve compliance may positively impact underwriter assessments of future compliance.

What steps could my district take to help provide underwriters reasonable assurance that my district will meet continuing disclosure requirements in the future? The December 2010 rule is new for underwriters too. This will be an evolving standard. In its August 2011 letter to the SEC, the MSRB noted there is not a lot of guidance for underwriters to use in assessing future district compliance and

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indicated further SEC guidance would be helpful in this area. They said that “real evidence of [a district’s] intent to comply [included the] adoption of policies and procedures concerning the required submissions and the retention of a dissemination agent charged with reminding issuers (districts) of their required filings.” Your district may want to discuss this with your financial advisor(s).

Why now? Before the Orange County treasurer went bankrupt in the 1990s due to bad investments, most municipal investments were considered safe – good bets. In response to that bankruptcy, continuing disclosure requirements were introduced. The rule changes said that in order to issue debt, districts must contractually commit to continuing disclosure requirements, but there were no real consequences for

noncompliance.

Due to the financial stresses facing state and local governments because of the current recession, providing transparency to investors through continuing disclosures has become more important than it was then. Market regulatory authorities are stepping in to protect investors. Though the guidelines were originally ineffective, noncompliance can now result in severe sanctions.

Dan Warden is director/consultant with CPA firm Vicenti, Lloyd & Stutzman. For more than three decades, Dan has acted as an independent advisor and consultant, assisting district financial personnel with facilities and bond oversight, as well as budgeting, accounting and reporting responsibilities. He has also served in a number of interim CBO, controller and director of fiscal services roles. You can reach Dan at DWarden@vlsllp.com.

Southern and Eastern sections to hold Vendor Show Oct. 25

The 43rd annual Vendor Show is scheduled for Oct. 25 at the Fairplex in Pomona. Registration is only \$5 and includes a number of workshops, including:

- *iPads for Educational Leaders*. Speaker: Tatia Davenport, deputy executive director, CASBO.
- *Zen Accounting – Balancing Your World*. Speaker: Dana Swart, coordinator, fiscal services, Orange County Department of Education.
- *Stormwater*. Speakers Joanne Branch, San Diego County Office of Education; David Miranda, Tustin Unified School District; and Andrea Sullivan, Orange County Department of Education.
- *Change Your Focus, Change Your Life!*

Speaker: Sidra Gaines, program specialist, Orange County Department of Education.

To register, go to <http://nregister.ocde.us> and select 2011 CASBO Fall Vendor Show. After you have created a log-in, continue to register for the event. Complete the online registration form and mail with your check or money order to: CASBO Vendor Show, c/o Orange County Department of Education, P.O. Box 9050, Costa Mesa, CA 92628-9050, ATTN: Sharon Hernandez.

Registration is from 7:30 to 8:30 a.m. and includes a continental breakfast. The vendor show is 8:30 to 11:15 a.m. and the workshops are from 11:30 to 12:30 p.m. Parking is complimentary.

iPad Academy is nearly here!

CASBO’s popular iPad Academy begins soon, so don’t delay! The nine-hour online series of workshops begins Oct. 26, 2011 and runs through March 14, 2012. A final two-hour, hands-on super user session will be offered at the CASBO Annual Conference in San Diego in April.

Topics to be covered include: an overview of the device; creating and sharing on the iPad; note-taking, sharing and document creation; social and general media use; photo importing, sharing and editing; and RSS feeds and news.

The cost of the workshop series is:

CASBO Member – \$1,316 (includes iPad2 (16GB Wi-Fi+3G).

Nonmember – \$1,491 Tuition (includes iPad 16GB Wi-Fi+3G)

Member pricing for series only (attendee has their own iPad) = \$700 (\$100/class)

Non-member pricing for series only (attendee has their own iPad) = \$875 (\$125/class)

For more information on CASBO’s iPad Academy, visit www.casbo.org and click on Professional Development. To register, contact Tatia Davenport at (916) 447-3783, ext. 2249 or by e-mail at tdavenport@casbo.org.

And stay tuned for more!! We will soon be announcing our iLearn Executive Series designed for the superintendent, board and executive staff!

Visit us at
www.casbo.org