



2016 ANNUAL CONFERENCE
Hotel Monteleone—New Orleans
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Disclosure: **What MAs Need to** **Know!**

Jim Mann, Moderator

Lisa Washburn, Speaker

Gregg Bienstock, Speaker

Meredith Hathorn, Speaker

Current State of Municipal Disclosure: Investor Perspective

Lisa Washburn

2016 NFMA Chair

Managing Director, Municipal Market Analytics



National Federation of Municipal Analysts

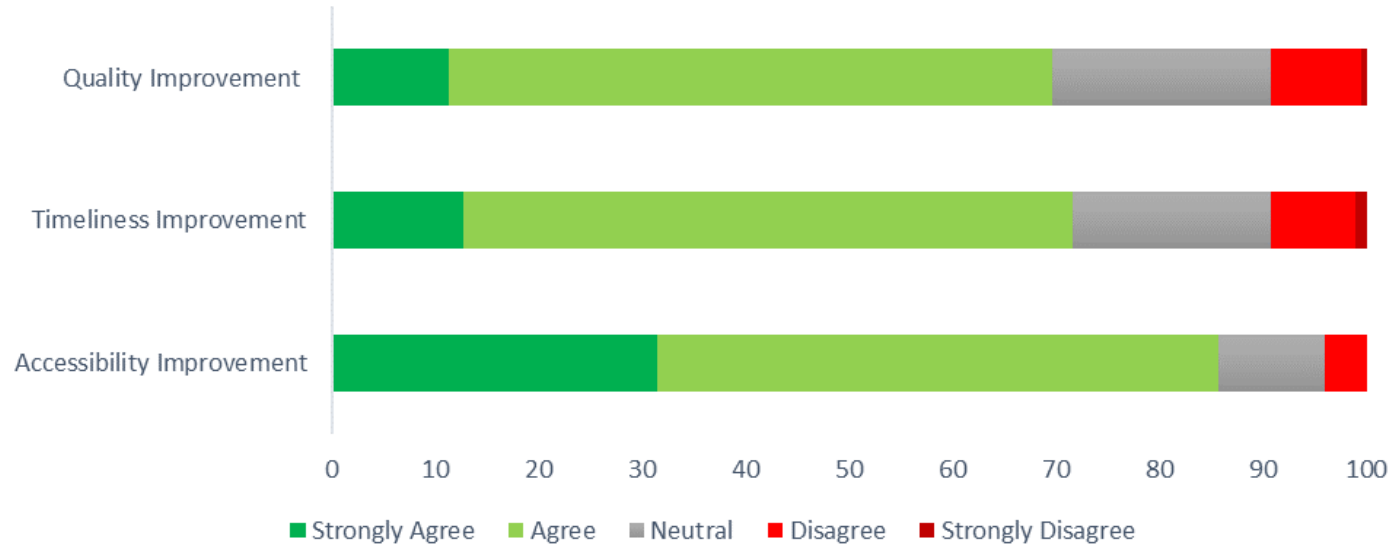
- The NFMA is a not-for-profit association with nearly 1,400 members in the United States and is primarily a volunteer-run organization
- The organization's goals are to promote professionalism in municipal credit analysis; to conduct educational programs for members and other interested parties, to promote better disclosure by issuers and to advocate for good practices in the municipal marketplace
- The NFMA seeks to educate its members, and by extension, the public at large, about municipal bonds
- Annual conferences are open to anyone wishing to attend and our *Recommended Best Practices in Disclosure* and *White Papers* are available on our website, www.nfma.org

MUNICIPAL DISCLOSURE HAS GOTTEN BETTER

- Rule 15c2-12: Expanded scope of information to be provided
- MSRB's EMMA system: Improved access to available information
- SEC's MCDC effort: Increased awareness of disclosure lapses, aligned market participants in effort to improve issuer disclosure

EMMA Has Greatly Improved Access To Disclosure

Extraordinary Disclosure Improvement Noted Over Past Decade
Key Development = MSRB's EMMA

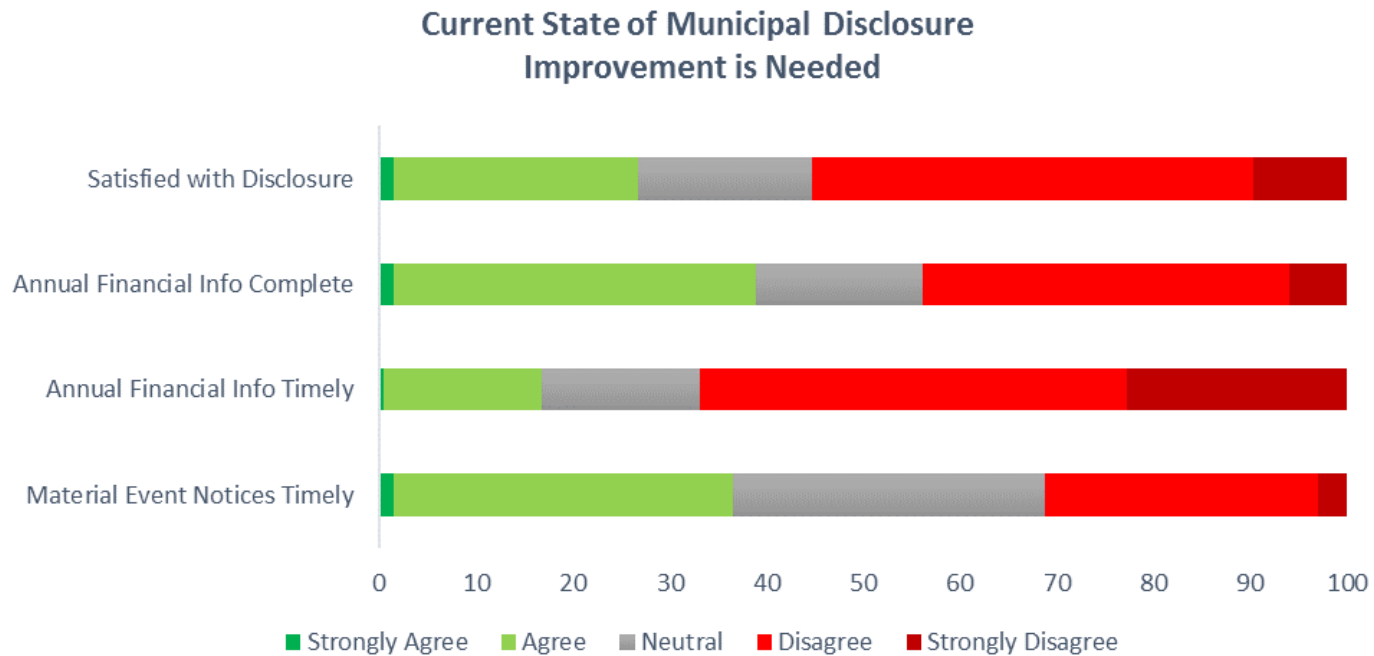


Source: NFMA Member Survey Responses

...But Further Improvement Is Needed

- More Timely Disclosure
- Availability Of Interim Financial Information (what currently exists)
- Disclosure Of All Activities/Events That Impact Credit Quality
- Make All Disclosures Available Publicly (Rating Agencies Vs. Investors)
- More Uniformity/Consistency In Presentation Of Financial Information
- Improve Clarity Of Notices (Plain English)
- Modernize EMMA To Improve Transparency And Information

About 25% of responding NFMA members are satisfied with current level of disclosure



Source: NFMA Member Survey Responses

Investors Increasingly Concerned About Disclosure

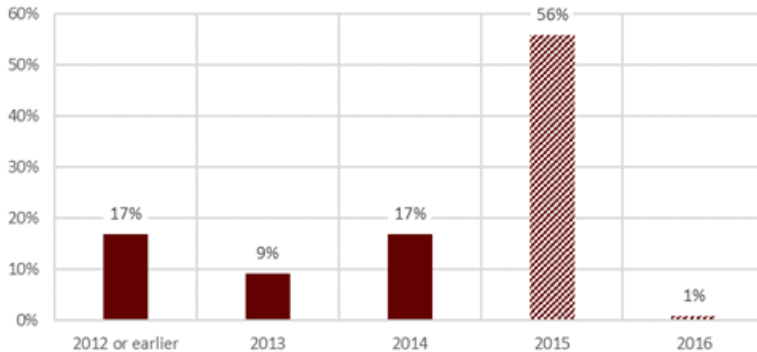
- Investors Provide Long-term Capital To Municipal Issuers And Must Assess And Value Their Investments Through Maturity
 - Risk profiles more volatile, political and legal landscapes less bondholder friendly
 - Customized disclosure by bond sector/security pledge
- Transparency (Disclosure) Is Critical To Market Function
 - Initial pricing
 - Liquidity and pricing in the secondary market
 - Lack of disclosure is a potential threat to the market
 - Puerto Rico's fiscal situation resulted from economic challenges, mismanagement and corruption, moving forward on a resolution was stymied by a lack of reliable disclosure (can't value positions, liquidity impaired)

Investors Increasingly Concerned About Disclosure

- Issuer Commitments Made Via The CDA Are Often Breached In Terms Of Information To Be Provided And Timeliness

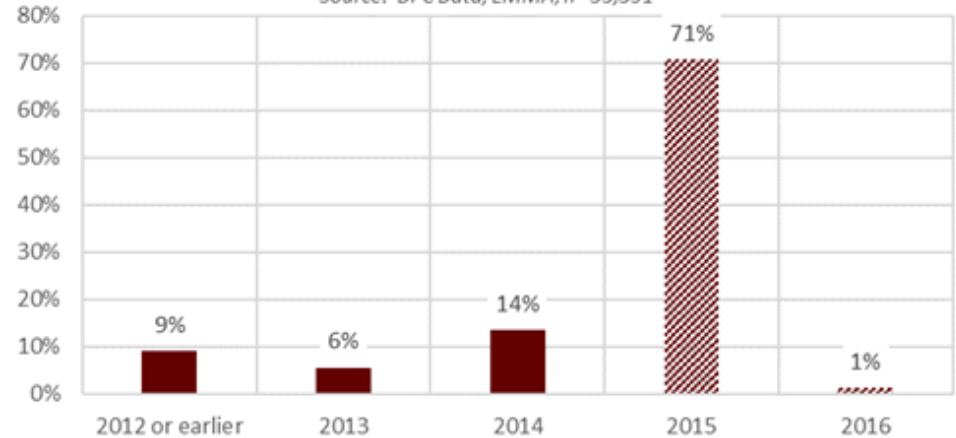
...And Data Illustrates The Timeliness And Transparency Gaps

Over 40% of Issuers' Most Recent Audits in EMMA are for FYs ending prior to 2015
(Identified as Audit in Audit Category)
Source: DPC Data, EMMA; n=22,253 Issuers*



*Non-filers not included in statistics

About 30% of Issuers' Most Recent Filing in EMMA's Audit Category
is for a FYs ending prior to 2015
Source: DPC Data, EMMA; n= 33,351*



*Non-filers not included in statistics

Achieving Desired Level Of Disclosure Has Been Challenging

- Reluctance To Provide Information Unless Required
- Focus On Investor Compensation (Better Pricing) For Good Disclosure
- Claims That Investors Are Not Impaired Because Of Lack Of Default

Bank Loan Disclosure Illustrates The Difficulty With Voluntary Disclosure

- Industry Concerns Regarding Non-disclosure Of Bank Loans Began In 2010-2011 And It Still Remains A Problem
- MSRB Released Several Statements Encouraging Disclosure Of Bank Loans Since 2012
- Broad Participation From Industry Groups To Raise Awareness On The Importance Of Considering Whether Bank Loans Should Be Disclosed. Paper Published In 2013
- Rating Agencies Released Several Commentaries Describing The Credit Risks Associated With Bank Loans
- GFOA Issued Several Statements Encouraging Its Members To Disclose Bank Loans Beginning In 2013

The NFMA's SEC Letter

- Consistent with NFMA's long-time call for better disclosure
- The investor community needs access to complete and timely information to assess credit quality and value securities. The method or mechanism for achieving this is of less importance
- Press coverage generated controversy. No call for Tower's demise but if 15c2-12 amendments not enough to generate more robust and timely disclosures, more oversight authority might be needed
- MCDC, bank loan disclosure efforts, and timeliness of financial filings point to the current challenges analysts face
- The NFMA remains committed to improving the quality, timeliness and accessibility of municipal disclosure for our members



DISCLOSURE: WHAT MUNICIPAL ADVISORS NEED TO KNOW FOR THEIR CLIENTS AND THEMSELVES

NAMA 2016 ANNUAL CONFERENCE

Gregg L. Bienstock, Esq.

CEO Lumesis, Inc.

October 7, 2016

- 180 Enforcement Actions by the SEC and FINRA in 3.5 Years
 - Actions Against Issuers, Officials, Underwriters, Municipal Advisors
 - Miami and its former budget director guilty of securities fraud for faulty disclosures.

“We will continue to hold municipalities and their officers accountable, including through trials, if they engage in financial fraud or other conduct that violates federal securities laws.” Andrew Ceresney, SEC Enforcement Director
 - MCDC
 - Underwriters: 72 firms and >\$18mm in fines
 - IC recommendations inconsistent
 - Issuers: 71 Issuers across 45 States
 - “Materially false or misleading statements or omissions about their compliance with continuing disclosure obligations”
 - Must do the following:
 - Establish appropriate policies and procedures and training within 180 days
 - Update past delinquent filings
 - Disclose MCDC Order in offerings for 5 years
- Many Issuers Need Help to Ensure Compliance

- Dealer and Issuer Orders and What We Learned
 - Competitive and Negotiated Deals
 - Missed/Late Audited Financial Filings & Operating Data
 - Overall Filing
 - Detailed Operating Data – Incomplete
 - “Certain financial information” as agreed under previous offerings
 - No Statement About Prior Compliance Where Failures Existed
 - Sticker 4 months After OS Does Not Cure Misstatement
 - Corrective Filings Prior to an Offering Does Not Cure
 - Failure to File Notice
 - Misrepresentation of Annual Financials Contained in the Official Statement
 - EMMA Cross References
 - OS with an Annual Report filed with EMMA Lacking Cross-Reference to Issue and/or CUSIP
 - Failure to Provide, within EMMA, Cross-References to Previously Filed Audit and Operating Filings
 - Ratings & “Certain notices of defeasance”

➤ Other Noteworthy Facts & Takeaways

- “A 2014 negotiated offering, **via private placement**, in which the final offering circular made no statement regarding Respondent’s prior compliance and thereby failed to disclose ...”
- An Order’s example related to a remarketing
- “... failed to disclose that Respondent also was late in filing its audited financial reports for fiscal 2007 by 80 days, for 2009 by 610 days, although **filed in the wrong location** only 72 days late...”
- No “Safe Harbor”
 - Examples do not = materiality boundary

➤ What We Don’t Know

- More Issuer Orders?
 - SEC response: “We can’t answer that.”
- SEC and FINRA Follow-on
 - Examination Follow-on and Focus
 - Those That Didn’t File

- IC Approaches Are Inconsistent
 - Impact on Issuers and their Advisors
 - Underwriters May Have Differing Requirements than/for Issuers
 - How Much Analysis is Needed by the Underwriter?
 - Competitive & Negotiated Deals; Lead v. Co-Managed
- Hearing Varied Responses in the Market
 - No Submission and No Fine
 - Acting as They Were or “Interpreting” Orders
- GFOA Alert to Members – Five Essential Practices
 - Understanding/Discussing Issuer’s Disclosure Policies & Procedures
 - Knowing Who is Filing What, When and Where
 - Awareness of What was Posted on EMMA
 - Knowing what the Issuer Committed to in its CDA
 - OS Statement That Issuer Failed to Materially Comply with Prior Commitments

- MAs Are Taking on New and Different Roles
 - Result of MCDC, the MA Rule & GFOA Alert
 - C&D Orders and GFOA Alert Create Service Opportunity
 - Gather Detailed Information
 - Clean-Up 15c2-12 Issues
 - Filing Requirement Notifications
 - Ongoing 15c2-12 Analysis – Ensure Filings are Done as Required
 - Ensure Proper Disclosure in OS – Past Issues and MCDC C&D Order
 - MA Rule
 - Fiduciary Obligation
 - Communication and Documentation

➤ Sharing Information

- Papers, Articles, Conference Summations
- FINRA Conference
 - SEC Public Finance Abuse Unit Focus
 - Offering and Disclosure Fraud – Protect Investors from Deficient Disclosure
 - Municipal Advisors
 - Coordination with Exam Staff
 - Fiduciary Action Under DF (pre MA Rule effective date)
 - MA Anti-Fraud -- Failure to Disclosure Scope of Relationship/Conflict
 - MCDC – No Comment if Done with Issuers
 - FINRA Highlighted Municipal Advisor Rule and Focus
 - Proper Disclosure At or Before Engagement

- Technology, Data Aggregation and Analysis
 - Gather Detailed Information for a Complete Picture
 - Issuer, Issue, CUSIP Analysis
 - Detailed Financial and Operating Data
 - Ratings Analysis (missed filings) – Independent Verification
 - “Reclassification” of Misclassified Filings
 - Obligor Profile
 - Outstanding Debt (Suitability)
 - Economic and Demographic Data
 - Clean-Up 15c2-12 Issues
 - Filing Requirement Notifications/Alerts
 - Audited Financials & Operating Data
 - Ratings Changes
 - News
 - Ongoing 15c2-12 Analysis – Ensure Filings Done as Required

- MA Rule – MSRB Rule G-42
 - Connect the Dots – Technology Can Help (... doesn't have to cost a lot)
 - Know Your Client
 - Suitability
 - Deal Files and Required Documentation Storage
 - Engagement, Disclosures, Recommendations and more

- Why Are Firms Looking Beyond EMMA for Disclosure Efforts?
 - Inefficient
 - Built for Purpose vs. Built for General Use
 - Misclassified Filings
 - Additional Data and Information
 - Need Integration into Workflow

Company and Speaker Information



Lumesis, Inc. is a financial technology company dedicated to serving the municipal market. We focus on delivering tools and resources that enhance your efficiency and help address evolving regulatory requirements through our applications and data delivery. Founded in 2010, Lumesis provides municipal market participants industry-leading technology, compliance and business solutions. Today, the company's DIVER platform helps hundreds of firms with over 44,000 users efficiently meet regulatory, credit and business needs.

Gregg Bienstock, Esq. Gregg is the CEO and Co-Founder of Lumesis, Inc. Before co-founding Lumesis, Gregg spent more than thirteen years with Ambac Financial Group where, most recently, he was responsible for Strategic Initiatives and previously served as Chief Administrative Officer and Employment Counsel. Prior to joining Ambac, he served as a Director of Human Resources for Bristol-Myers Squibb. From 1993 through February 1996, he was an associate in the Labor and Employment Law Department of Proskauer Rose, LLP and from 1992 through September 1993 he was an Assistant Deputy General Counsel for the Mayor's Office of Labor Relations for the City of New York. Gregg is a 1991 graduate of Brooklyn Law School. He received his B.S. in Business and Economics from the University of Maryland.

gbienstock@lumesis.com

203.276.6501

Post MCDC World

Meredith L. Hathorn
Partner
Foley & Judell, L.L.P.

MCDC Initiative

- Failure To Comply With Continuing Disclosure Obligation.
- To Date:
 - 72% Underwriters (96% Of The Market Share)
 - 71 Issuers In The First Round
 - Orders Are Nonnegotiable In Many Respects.

Lessons Learned: Legal Standpoint

- Failure To Include All Failures To File To SEC Does Not Consider Materiality.
- Rule 15(c)(2)-(12) States As Follows:
 - The term final official statement means a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter(s) and that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data, concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the Offering; and a description of the undertakings to be provided pursuant to paragraph (b)(5)(i), paragraph (d)(2)(ii), and paragraph (d)(2)(iii) of this section, if applicable, and of any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, **in all material respects**, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents available to the public on the Municipal Securities Rulemaking Board's Internet Web site or filed with the Commission.

Lessons Learned: Legal Standpoint

- Bottom Line From SEC:
 - The Information Is Either On EMMA Or It Is Not.
 - Bright- Line Test: Defined Rule Or Standard, Composed Of Objective Factors, Which Leaves Little Or No Room For Varying Interpretation, Either It Is On Emma Or It Is Not.

Issuer Settlements

- State of Minnesota – Failed to file 2008 audited financial report for certain outstanding bonds and filed 2010 audited financial report on EMMA 70 days late for certain outstanding bonds.
- Board of Trustees of Arkansas Tech University – Failed to disclose that it filed its 2006 audited financial statements 143 days late and that it failed to file its 2011 audited financial information and operating data in EMMA by the time of the offerings.
- Lauderdale County, Mississippi – Filed audited financial reports for 2008 and 2009 between 144 to 200 days late, despite the fact that the audited financial statements were available.
- State of Hawaii – Filed financial statements for 2009 and 2010 in EMMA 223 and 206 days late.

Issuer Settlements

- City of Memphis – Failed to disclose that it was late in filing its audited financial reports for 2007 by 80 days, for 2009 by 610 days (although filed in the wrong location only 72 days late), and for 2010 by 245 days (although timely filed in the wrong location).
- Lawrence & Memorial Hospital, Inc. and Lawrence & Memorial Corp. – Filed financial statements and operating data reports late for fiscal years 2008, 2009, and 2010 by 1,706 days, 1,341 days, and 976 days, respectively.
- State of Montana Department of Transportation – Failed to file financial statements for 2011, as well as certain operating data concerning federal aid revenue for fiscal years 2007, 2008, 2010 and 2011 by the time of the offering.

Excuses Do NOT Matter to the SEC

1. Staff Turnover
2. Hurricanes
3. Filings On NRMSRs (Nationally Recognized Municipal Securities Information Repositories)
4. Misfiled CUSIP
5. Publicly Available Audits
6. Not Really Responsible For Filing (Same Entities, Different People, Responsible Under The Policies.)

MA's and Disclosure

- MA Work in the Disclosure Realm
 - Official Statements
 - Continuing Disclosure
 - Nothing!
- Efforts to Have MAs Be Held Responsible for Disclosure Work
 - OS/Competitive Sales
- G-42 and Disclosure
 - Qualification

MA's and Disclosure

- Still See Underwriters And Their Counsel Undertaking Disclosure Duty To Check Old Filings, Etc.
- Seeing Every Failure To Disclose Being Included.
- MSRB Rule G-42: Municipal advisors are required to exercise due care when advising all clients, including state and local governments, other municipal entities and non-municipal entities obligated to repay the bonds. This “duty of care” entails a responsibility to possess the requisite knowledge and conduct appropriate research to provide informed advice and make suitability determinations for recommendations to their clients. Further, when dealing with municipal entities, municipal advisors owe a duty of loyalty and must act with utmost good faith and put their clients' interests ahead of their own under the federal fiduciary duty established by the Dodd-Frank Act.

MA's and Disclosure

- If a Municipal Advisor (the “MA”) representative recommends a municipal securities transaction, or is asked by the client to review a recommendation of a third party, the representative must use reasonable diligence to determine whether the transaction is suitable for the client.
 - requires MA to “know your client” and consider a variety of factors such as the client’s risk tolerance, financial situation and experience with municipal securities transactions or municipal financial products.
 - MA must inform the client about the risks, potential benefits, structure and other characteristics of the transaction or product.
 - MA must disclose the basis for reasonably believing that the transaction or product is, or is not, suitable for the client, as well as whether the municipal advisor investigated other reasonably feasible alternatives to the recommended transaction.

MA's and Disclosure

- A Determination Of Whether A Municipal Securities Transaction (Or Municipal Financial Product) Is Suitable Must Be Based On Certain Factors:
 - the client's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs,
 - experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended,
 - financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding, and
 - any other material information known by the municipal advisor about the client and the municipal securities transactions or municipal financial product, after reasonable inquiry.

MA's and Disclosure

- MA Must Use Reasonable Diligence In Regard To:
 - the maintenance of the municipal advisory relationship,
 - knowing and retaining the essential facts concerning the client, and
 - the authority of each person acting on behalf of such client.
- The Facts “Essential” To “Knowing A Client” Include Those Required To:
 - effectively service the municipal advisory relationship with the client;
 - act in accordance with any special directions from the client;
 - Understand the authority of each person acting on behalf of the client; and
 - Comply with applicable laws, regulations and rules

MA's and Disclosure

- Municipal Advisor Anti-Fraud provisions prohibit misstatements or misleading omissions of material facts, and fraudulent or manipulative acts and practices, in connection with the purchase or sale of securities. While these provisions are very broad, the Commission has adopted rules, issued interpretations, and brought enforcement actions that define some of the activities considered to be manipulative, deceptive, fraudulent, or otherwise unlawful.

Increased Use of Disclosure Counsel

- Disclosure Counsel-More Continued Role Consistent Of Counsel. Not Subject To As Much Rotation, Bids, Etc.
- Other Items To Keep In Mind
 - Ongoing Education- Seminars, training, etc.
 - Following Policies-redundancy at staff
 - Issuer vs. Staff