

Policy

SECONDARY BOND MARKET – CONTINUING DISCLOSURE AGREEMENT

Access to capital is critical for advancing needed infrastructure projects and meeting cash flow needs. As a condition of providing access to capital in the form of debt, the financial community expects to be kept abreast of key financial information that could impact the value of securities in the secondary market. Legally, the Alloway Township Board of Education has an obligation to provide certain information. The board is obligated under federal law to issue certain information at the time of issuing new debt, and it is frequently contractually obligated to continue providing certain information while their debt remains outstanding.

Should the district have outstanding bonds, bond anticipation notes and/or other securities, or if it anticipates a need to access financial markets in the near future, it shall comply with any and all requirements mandated by the state and/or the Securities Exchange Commission (SEC) regarding any continuing disclosure commitments as may be mandated.

Continuing disclosure requirements are indirectly required pursuant to federal law. The board secretary/business administrator and/or the superintendent are generally required in one or more documents authorizing the issuance of debt (commonly called “Continuing Disclosure Agreements”) to annually, or more frequently, publicly disclose certain information. Consequences of failing to live up to requirements will likely include future difficulty accessing credit markets. Consequences for noncompliance may include, among other things:

- A. Enforcement actions being brought by the SEC that will result in more severe penalties otherwise available pursuant to the SEC’s Municipalities Continuing Disclosure Cooperation Initiative;
- B. Denial or deferral of applications made to the Local Finance Board for various approvals;
- C. Actions against state licensures in the event of fraudulent attestations of compliance; and/or
- D. Decreased scores on future “Best Practices Questionnaires” (which will contain questions as to past compliance) that could trigger a withholding of a portion of state aid.

The Securities Exchange Commission (SEC) has adopted a program to encourage local issuers to self-identify any past noncompliance and improve timely continuing disclosure in the future. This program, known as the *Municipalities Continuing Disclosure Cooperation Initiative*, essentially establishes lesser enforcement actions provided local issuers self-identify past noncompliance and agree to a plan designed to prevent future noncompliance.

The board of education, through the board secretary/business administrator and the superintendent shall proactively take steps to self-identify its own levels of compliance with Continuing Disclosure Agreements if it has outstanding debt, and to consult with appropriate public finance officials during this process to determine if it is advisable to participate in the SEC’s program.

The board will also take steps to improve disclosure closely by reviewing past compliance and, as appropriate, refraining from underwriting or buying new debt unless compliance has been achieved. When anticipating a need to access financial markets, the board of education will conduct a self-assessment of past continuing disclosure compliance and correct any deficiencies if they exist.

As a part of the budget submission process to the executive county superintendent, the superintendent and the board secretary/business administrator are to attest that appropriate steps are being taken to ensure compliance with continuing disclosure requirements.

As part of such self-assessment, the Board shall identify any continuing disclosure contractual obligations with

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respect to past issuances of debt while it remained (or remains) outstanding. These obligations generally include filing audits, budgets, and certain operating data with various depositories.

Continuing Disclosure Agreements generally specify what information must be filed and where it must be filed. If there are any continuing disclosure requirements, the Board will file the following information through the Municipal Securities Rulemaking Board's Electronic Municipal Marketplace Access (EMMA) website (www.emma.msrb.org) in addition to any information it previously agreed to provide:

- A. As soon as available: The issuer's Annual Financial Statement -- or a variation thereof where an Annual Financial Statement is not statutorily required; and
- B. As soon as available: The issuer's audited financial statements; and
- C. As soon as available: The issuer's adopted budgets; and
- D. Within 180 days of the end of the fiscal year: Annual operating data, consisting of (if applicable):
 1. Debt statistics;
 2. Property Tax Information and tax statistics where the issuer relies on property tax collections as a major source of revenue;
 3. Other major revenue data and statistics where the issuer relies on revenues other than property tax collections;
 4. Capital budget;
 5. New construction permits.
- E. Within 10 business days of the occurrence of any material events consisting of the following:
 1. Principal and interest payment delinquencies;
 2. Non-payment related defaults, if material;
 3. Unscheduled draws on debt service reserves reflecting financial difficulties;
 4. Unscheduled draws on credit enhancements reflecting financial difficulties;
 5. Substitution of credit or liquidity providers, or their failure to perform;
 6. Adverse tax opinions, the issuance by the Internal Revenue Service;
 7. Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
 8. Modifications to rights of security holders, if material;
 9. Bond calls, if material, and tender offers;
 10. Defeasances;
 11. Release, substitution, or sale of property securing repayment of the securities, if material;
 12. Rating changes;
 13. Bankruptcy, insolvency, receivership or similar event of the obligated person;
 14. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
 15. Appointment of a successor or additional trustee or the change of name of a trustee, if material; and
 16. Any and all additional or other information or documents required by the specific continuing disclosure obligations of such Issuer, for any particular series of Securities outstanding.

The board shall also ensure that past official statements, or similar documents issued with respect to new issuances of debt, have accurately reported past compliance with continuing disclosure requirements.

The board secretary/business administrator is encouraged to seek the assistance of an experienced professional to assist or undertake such self-assessment.

The board secretary/business administrator shall attest that appropriate steps are being taken to ensure

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compliance with continuing disclosure requirements.

District auditors are required to treat non-compliance with continuing disclosure requirements as an instance of non-compliance with prevailing laws, statutes, regulations, contracts and agreements that is required to be reported under Government Auditing Standards.

Adopted: March 17, 2015
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Readopted:

Key Words

Tuition, Fees, Tuition Rates

Legal References: N.J.S.A. 18A:17-34 Receipt and disposition of money
N.J.S.A. 18A:20-37 et seq. Investment

Rule 15c2-12 (SEC) Prohibition of Underwriters from purchasing securities
Section 17(a) (SEC) Securities Act of 1933 – Enforcement
Section 10(b) (SEC)– Enforcement
Securities Exchange Act of 1934 – Violations and Compliance
West Clark Community Schools, AP File No. 3-15391 (7/29/2013)
City Securities Corp & Randy G Ruhl, AP File No. 3-15390 (7/29/2013)
Amendments Municipal Securities Disclosure, SEC Act Release No. 34-62184A
(5/26/2010)
75FR331100, supra n. 348-362 (6/10/2010)

Possible
Cross References: *290 Investment

*Indicates policy included in the Critical Policy Reference Manual.