

What is the “Official Statement?”

An important aspect of the bond issuance process is the preparation of an offering document, commonly called the Official Statement. This document is prepared by or on behalf of the issuer and is utilized by issuers and municipal underwriting firms to provide material and accurate information about the issuer and the securities being issued to potential investors. The Official Statement is the issuer’s main source of anti-fraud liability in a municipal securities transaction. The Securities and Exchange Commission (SEC) is charged with enforcing the anti-fraud and related rules to protect investors’ interests. In addition, the Official Statement is reviewed by rating agencies, insurance companies and investors for credit analysis purposes.

A Preliminary Official Statement that is “deemed final” by the issuer is provided to potential investors prior to the sale of securities to allow them to make informed decisions regarding credit quality and risk. After the pricing of the bonds, revisions are made to finalize the Official Statement before it is posted on the Municipal Securities Rulemaking Board’s (MSRB) Electronic Municipal Market Access (EMMA) system by the underwriter. Official Statements are prepared for both competitive and negotiated public offerings (in excess of \$1.0 million) and are subject to SEC Rule 15c2-12 (the “Rule”), which provides guidance for the content of Official Statements and requires underwriters to provide investors with an Official Statement. While the Rule is not directly enforceable to an issuer, a broker dealer cannot underwrite an issuance of securities without the issuer agreeing to comply with the requirements of the Rule.

According to the Rule, underwriters are required to contract with issuers to provide a final Official Statement within seven business days following the bond pricing date. MSRB Rule G-32 requires the underwriter to file the Official Statement on EMMA and provide the document to all purchasers by the time of settlement of the municipal bond transaction.

Official Statement Contents

The Rule requires that the Official Statement contain “information concerning the terms of the proposed issue of securities” and “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.” The Rule also requires that the Official Statement contain a description of the issuer’s continuing disclosure undertaking that will be entered into as of the closing of the securities, as well as any instances of material failure by the issuer to comply with previous continuing disclosure undertakings in the five year period preceding the date of the Preliminary Official Statement.

Contents of the Official Statement may vary depending on the issuance and/or issuer, but the following information is typically included:

1. Cover Page

The cover page provides information about the issuer and the bond issue, including the principal amount. The name of the bond issue gives very basic information about the financing and indicates the security for the bonds (e.g., general obligation or revenue bonds). The credit rating and insurance enhancement, if any, also appears on the cover page.

2. The Issuer

This section provides information about the issuer, its governing body and other pertinent information about the bond issue. It includes demographic and economic data such as general location, wealth and income levels, home values, population, largest area employers, unemployment statistics, tax base and tax rate(s), audited financial data (including financial statements), budget, pension and OPEB assets or liabilities, short and long-term indebtedness, other financial obligations, indebtedness of overlapping taxing entities and other information that would describe the issuer’s creditworthiness.

3. The Project/Refunding

This section highlights the purpose for which the debt is being issued.

4. Sources and Uses of Funds

This section states the source of payment available for the financing, including sources other than bond proceeds used to finance the project/refunding. This section also states the uses of funds and incorporates the project (for a new money issue), escrow (for a refunding) and costs of issuance.

5. Security for the Bonds

This section discusses the funds and properties available to the issuer to pay the debt service on the bonds, including the legal authority for the issuer to sell the bonds.

6. Description of Bonds

This section provides identifying information about the debt as part of the issuance. This information includes whether the bonds are book-entry only, the dated date of the bonds, the authorized denominations, the interest payment dates, the interest rate, and the redemption provisions.

Official Statements are also prepared based on best practice guidance provided by entities such as the Government Finance Officers Association (GFOA), the National Federation of Municipal Analysts (NFMA), the National Association of Bond Lawyers (NABL), and other organizations.

Official Statements are prepared for both competitive and negotiated sales. In a competitive sale, the issuer, with the assistance of its financial advisor and counsel, structures the financing and prepares the Preliminary Official Statement. With assistance from the financial advisor, the issuer advertises the sale of the securities in financial newspapers (such as The Bond Buyer) and requests bids from underwriters.

In a negotiated sale, the financial advisor, the underwriter and its counsel are involved in structuring the transaction and drafting the bond documents. The underwriter also negotiates its fee or discount with the issuer or the conduit borrower before the pricing of the bonds.

Risks & Responsibilities

As discussed, the Official Statement is subject to federal securities laws which seek to protect investors and require issuers, advisors and underwriters to perform due diligence to help ensure that the Official Statement is accurate and complete.

Although the Official Statement is often prepared by a party other than the issuer (i.e., financial advisor, underwriter or legal counsel), the Official Statement is ultimately the issuer's document and the issuer has a legal responsibility for it. The issuer's elected officials and administration is held accountable for the accuracy of the information disclosed in the Official Statement. The Issuer must be involved in preparation and review of the Official Statement prior to distribution to investors, and may also consider engaging disclosure counsel to review the adequacy of the disclosure in the Official Statement.

Benefits of Accurate Disclosure

Providing complete and accurate disclosure in the offering document facilitates investor relations and improved market access. Sufficient disclosure of favorable information can strengthen a positive credit profile for the issuer. Issuers that provide accurate disclosure can also avoid regulatory scrutiny from the SEC.

Next Edition Understanding Municipal Bonds

In our coming editions, we will review continuing disclosure including recent changes to the Rule.

Bob Lewis
SVP, Managing Director–IL
630.657.6445
rlewis@pmanetwork.com

Tammie Beckwith Schallmo
SVP, Managing Director–IL
630.657.6446
tammie@pmanetwork.com

Erik Kass
Director, Public Finance–WI
414.436.4584
ekass@pmanetwork.com

Steve Pumper
Vice President–MN
612.509.2565
spumper@pmanetwork.com

Andrew Kim
Director, Public Finance–IL
630.657.6449
akim@pmanetwork.com

Stephen Adams
Director, Public Finance–IL
618.604.7677
sadams@pmanetwork.com

Brian Della
Director, Public Finance–WI
414.436.3523
bdella@pmanetwork.com

Michael Hart
Director, Public Finance–MN
612.509.2569
mhart@pmanetwork.com

Financial Strategies for Stronger Communities.™

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