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LEADERS IN PUBLIC FINANCE

Continuing Disclosure Requirements & EMMA

Philip Cosson - Ehlers

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Continuing Disclosure

- What is it:
 - A contract between an issuer of tax-exempt debt and the bond holders to provide annual financial information.
- Purpose:
 - Continuing Disclosure Requirements which are administered by the SEC) want municipal issuers to provide ongoing information about their debt
 - Ensure market transparency
 - Ensure bonds sold to investors on the secondary market are properly priced

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Continuing Disclosure

- Why:
 - The SEC can not regulate issuers, the SEC regulates the underwriter or bond purchaser.
 - Underwriters, in complying with SEC Rule 15c2-12, can only buy debt if the issuer approves a “Continuing Disclosure Agreement”
- Applicability and Scope:
 - SEC Rule 15c2-12 requires underwriters of municipal securities, among other things, to reasonably determine that the issuer or the obligated person has undertaken to provide certain information on a continuing basis to the MSRB in an electronic format:
 - Annual financial and operating information and audited financial statements, if any
 - Notices of the occurrence of any of 14 specific events
 - Notices of the failure of an issuer or obligated person to make a timely/complete annual filing



Continuing Disclosure

- What Triggers this requirement:
 - Full Disclosure: Issuer with over \$10M in outstanding debt
 - Audited Financial Statements
 - Annual Financial Information
 - Operating Data
 - Annual Report and event notices need to be filed
 - Limited Disclosure: Issuer with less than \$10M in outstanding debt
 - Audited Financial Statements
 - Event Notices
 - Typically issues with less than \$1M in outstanding debt is exempt from this requirement

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Continuing Disclosure Certificate

APPENDIX D

FORMS OF CONTINUING DISCLOSURE CERTIFICATES
CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the City of Franklin, Milwaukee County, Wisconsin (the "Issuer") in connection with the issuance of \$5,345,000 General Obligation Preliminary Note, Series 2014A, dated December 18, 2014 (the "Securities"). The Securities are being issued pursuant to Resolutions adopted by the Governing Body of the Issuer on October 21, 2014 and December 2, 2014 (collectively, the "Resolutions") and delivered to _____ (the "Purchaser") on the date hereof. Pursuant to the Resolutions, the Issuer has covenanted and agreed to provide continuing disclosure of certain financial information and operating data and timely notices of the occurrence of certain events. In addition, the Issuer hereby specifically covenants and agrees as follows:

Section 1.04. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the Issuer for the benefit of the holders of the Securities in order to assist the Participating Underwriters within the meaning of the Rule (defined below) in complying with SEC Rule 15c2-12(b)(5). References in this Disclosure Certificate to holders of the Securities shall include the beneficial owners of the Securities. This Disclosure Certificate constitutes the written Undertaking required by the Rule.

Section 1.03. Filing Requirements. Any filing under this Disclosure Certificate must be made solely by transmitting such filing to the MSRB (defined below) through the Electronic Municipal Market Access ("EMMA") System at www.emma.msrb.org in the format prescribed by the MSRB. All documents provided to the MSRB shall be accompanied by the identifying information prescribed by the MSRB.

Section 2. Definitions. In addition to the defined terms set forth in the Resolutions, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" means any annual report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"Audited Financial Statements" means the Issuer's annual financial statements, which are currently prepared in accordance with generally accepted accounting principles (GAAP) for governmental units as prescribed by the Governmental Accounting Standards Board (GASB) and which the Issuer intends to continue to prepare in substantially the same form.

"Final Official Statement" means the Preliminary Official Statement dated November __, 2014 (as supplemented by an Addendum dated December 3, 2014) delivered in connection with the Securities, which is available from the MSRB.

"Fiscal Year" means the fiscal year of the Issuer.

"Governing Body" means the Common Council of the Issuer or such other body as may hereafter be the chief legislative body of the Issuer.

"Issuer" means the City of Franklin, Wisconsin which is the obligated person with respect to the Securities.

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Continuing Disclosure Agreement – Outlines Issuer Disclosure Responsibilities

- Two Types of ongoing disclosure for the life of the issue

- Annual Report
- Notices of Certain Disclosure Events

1. Principal and interest payment delinquencies
2. Non-Payment related defaults
3. Unscheduled draws on debt reserves
4. Unscheduled draws on credit enhancements
5. Substitution of credit or liquidity providers
6. Events affecting the tax-exempt status of bonds
7. Bond calls & tender offers
8. Defeasances
9. Rating changes
10. Bankruptcy, insolvency, receivership
11. Any other fact determined to be material
12. Appointment of successor trustee
13. Merger, acquisition or sale of all issuer assets
14. Release, substitution or sale of property securing repayment of securities



Recent Activity

- SEC “Report on the Municipal Securities Market”
 - July of 2012
 - Mandated by Dodd-Frank
 - Offered “recommendations” regarding disclosure:
 - Legislative authority to promulgate primary and secondary disclosure requirements for issuers
 - Authority to establish form and content of financial statements
 - Permit IRS to share information with SEC in instances of suspected securities fraud
 - Authority to require Trustees or other entities to enforce terms of CDAs



Recent Activity – Cont.

- MCDC
 - Announced by SEC on March 10, 2014
 - Encouraged issuers and underwriters of municipal securities to self-report certain violations of federal securities laws rather than wait for violations to be detected.
 - Standardized, favorable settlement terms to municipal issuers and underwriters who self-report inaccurate statements in bond offerings about prior compliance with continuing disclosure obligations specified in Rule 15c2-12.



Recent Activities – Cont.

- MCDC Initiative
 - The Official Statement is required to describe the Issuer's track record in terms of compliance with Continuing Disclosure
 - The Securities & Exchange Commission's ("SEC") MCDC program encouraged issuers to review those Official Statement descriptions and voluntarily report instances in which the descriptions were incorrect
 - For issuers, the MCDC program has not involve fines but may involve other remedial measures



Continuing Disclosure

- Trends
 - Disclosure Counsel
 - Issuers asking bond counsel to act as "Disclosure Counsel"
 - Continuing disclosure and materiality
 - Dissemination Agent
 - More issuers employing "dissemination agent" to assist with preparation and filing of continuing disclosure reports
 - Voluntary Disclosures
 - Private placement & derivative transactions
 - Reporting of "significant" events
 - Bondholder Relations



Trends

- Disclosure Counsel
 - More issuers ask their Bond Counsel to also act as “Disclosure Counsel” to assist them in meeting their due diligence obligation regarding review of their Official Statements
 - This trend has increased in light of:
 - White papers (e.g., on unfunded pension and OPEB liability)
 - Other industry guidance regarding POS contents
 - Enforcement actions including against individual officials
 - Detroit default and attention to bankruptcy and nature of security
 - SEC “MCDC” Initiative

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Trends – Cont.

- Dissemination Agent

More issuers employ a “dissemination agent” to assist in the preparation and filings of Continuing Disclosure reports



Continuing Disclosure – Reportable Events

- Continuing Disclosure: Reportable Events
 - Issuers must also report certain events:
 - e.g., a redemption
 - e.g., a rating change

Issuers must monitor for the occurrence of these events and must report them on EMMA within 10 days – call your financial professionals!

- All the events are listed in the Continuing Disclosure Agreement



Filing Requirements

- All disclosures must be filed with the Municipal Securities Rulemaking Board (MSRB) on its EMMA website
 - emma.msrb.org, provides an introduction to EMMA and a guide to municipal bond information, including real-time trade data, disclosure documents for bonds and market statistics.
 - all information is free
- Notices of Certain Disclosure Events must be filed within **10 business days** of the occurrence



EMMA – Pertinent Content

- MSRB Education Center – For State and Local Governments:
 - Issuing Municipal Securities
 - Monitoring Securities
 - Disclosing Information to Investors
- Specific Issuer and Debt Issue Information:
 - Debt Issues Outstanding and Related CUSIP Numbers
 - Trade Information & Pre-Sale Doc's - Not Pertinent
 - Official Statements
 - Refunded Issues
 - Financial Disclosures
 - Event Based Disclosures

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EMMA – Cont.

- Benefit to Issuers:
 - Provides information on all outstanding securities
 - Provides all continuing disclosure filings
 - Provides all event-based disclosures
 - Allows you to answer questions that may come from investors regarding a specific issue or CUSIP
 - Compliance with your Continuing Disclosure Certificate
 - Sign up for alerts by creating an account on MyEMMA
 - Rating changes
 - Disclosure Filings
 - Etc.

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Continuing Disclosure – Policy & Procedures

- Suggestions:
 - Work with your bond council firm or MA to establish
 - Identify compliance officer
 - Require compilation of all continuing disclosure agreements
 - Require annual review of reporting requirements
 - Establishment of calendar or reporting dates
 - Establish procedures for monitoring material events
 - Compliance officer review of offering documents
 - Training and continuing education for personnel
 - Protocols for dissemination of public information



Market Developments

- Investors in certain sectors require quarterly or more frequent financial updates
- Underwriters may no longer rely on representations from the issuer regarding compliance, must conduct their own investigations instead
 - Issuer's internal policies and procedures (may include hiring a consultant – More Later)
 - Proof of filing annual reports/event notices
 - Timely Audits



Take-Aways

- Responsibilities don't end with closing
- There are ongoing, "post-issuance" requirements
 - Record Retention
 - Arbitrage analysis
 - Monitor private use/private financing
 - Annual report disclosure
 - Material event disclosure
- Post-issuance compliance is taking on more significance in light of increased regulatory scrutiny



Take-Aways

- Adopt policies and procedures to comply with Federal Tax Laws
- Consider whether disclosure counsel is appropriate
- Consider whether a dissemination agent is appropriate
- Consider adopting policies and procedures to comply with Federal Securities Laws
- When in doubt, call your finance professionals





Philip Cosson – Ehlers
Senior Municipal Advisor

(262) 796-6161
pcosson@ehlers-inc.com

