

FIN \_\_\_\_:  
Continuing Disclosure  
and Who's Who in a  
Bond Issue



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# Topics To Be Discussed

- Disclosure Best Practices
- Roles of Financing Participants



# Disclosure Best Practices - Type

## Two Types of Disclosure

- Primary Offering Disclosure
  - Associated with a new capital markets debt issue
- Continuing Disclosure
  - Many times issuer is required to provide ongoing continuing disclosure as long as debt remains outstanding



# Disclosure Best Practices – Primary Offering

## What is a Primary Offering?

### Issuer

- Issuer overview
- Projections
- Facilities data
- Financial outlook
- Financial Statements

### Bond Counsel

- Demographic info from Census & other sources
- Description of tax base and other sources of revenue
- Debt limitation tables
- Debt tables
- Bond counsel opinion
- Interface with County Auditor
- Actual production of document

### Underwriter/MA

- Structuring information
- Continuing disclosure agreement
- Economic Development

**OFFICIAL STATEMENT OF THE  
MIDDLETOWN CITY SCHOOL DISTRICT  
County of Butler and Warren, Ohio**  
 Relative to the original issuance of  
**\$42,190,000**  
 General Obligation Unimproved Tax Sinking Bonds, Series 2019  
 (Federally Taxable)

**ISSUANCE STATEMENT**

| Year          | 2019       | 2020      | 2021      | 2022      | 2023      | 2024      | 2025      | 2026      | 2027      | 2028      | 2029      | 2030       |
|---------------|------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|
| Principal     | 42,190,000 | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0          |
| Interest      | 2,109,500  | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500  |
| Final Payment | 0          | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 42,190,000 |
| Total         | 42,190,000 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 42,190,000 |


**ISSUANCE STATEMENT - INTEREST TERM BONDS**

| Year      | 2019      | 2020      | 2021      | 2022      | 2023      | 2024      | 2025      | 2026      | 2027      | 2028      | 2029      | 2030      |
|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Principal | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| Interest  | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 |
| Total     | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 | 2,109,500 |

**ISSUANCE STATEMENT - APPROPRIATION BONDS**

| Year      | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 |
|-----------|------|------|------|------|------|------|------|------|------|------|------|------|
| Principal | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Interest  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Total     | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |

**OFFICIAL STATEMENT DATED NOVEMBER 19, 2019**



### County Auditor

- Assessed Valuation data
- Tax tables
- Largest taxpayer list



# Disclosure Best Practices - Continuing Disclosure

- Required by SEC Rule 15(c)2-12
- Selected financial and operating data from Official Statement must be filed annually while the bonds are outstanding





# Disclosure Best Practices Continuing Disclosure Agreements

- Issuer subject to Rule 15(c)2-12 must enter into a continuing disclosure undertaking
  - Continuing Disclosure Agreement
- Continuing Disclosure Agreements
  - Annual filing date
  - Sets forth what needs to be filed:
    - Audited financials\*
    - Selected annual financial/operating data from the Official Statement (largest taxpayers, tax collection rates, assessed valuation, etc.)
    - Material Event Notices (rating change, late payment, etc.)

\*if audit not available by filing date, is to be filed once it becomes available





# Disclosure Best Practices - Continuing Disclosure – Two New Events for 2019

|   | Events  | Materiality                   |
|---|---|-------------------------------|
| 1 | principal and interest payment delinquencies  | Without regard to materiality |
| 2 | Non-payment related defaults  | If material                   |
| 3 | unscheduled draws on debt service reserves reflecting financial difficulties  | Without regard to materiality |
| 4 | unscheduled draws on credit enhancements reflecting financial difficulties  | Without regard to materiality |
| 5 | substitution of credit or liquidity providers, or their failure to perform  | Without regard to materiality |
| 6 | adverse tax opinions, the issuance by the Internal Revenue 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 securities, or other material events affecting the tax status of the securities | Without regard to materiality |
| 7 | modifications to rights of Holders of the securities  | If material                   |
| 8 | bond calls and tender offers  | If material                   |
| 9 | defeasances   | Without regard to materiality |



# Disclosure Best Practices - Continuing Disclosure – Two New Events for 2019

|    | Events   | Materiality                   |
|----|--|-------------------------------|
| 10 | release, substitution, or sale of property securing repayment of the securities  | If material                   |
| 11 | rating changes   | Without regard to materiality |
| 12 | bankruptcy, insolvency, receivership or similar event of the obligated person  | Without regard to materiality |
| 13 | 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 | If material                   |
| 14 | appointment of a successor or additional trustee or the change of name of a trustee, if material   | If material                   |
| 15 | incurrence of a financial obligation of the Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Obligated Person, any of which affects security holders, if material   | If material                   |
| 16 | default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Obligated Person, any of which reflect financial difficulties   | Without regard to materiality |



# Disclosure Best Practices – When Would Disclosure Not Apply

- Exceptions
  - Bank placements (not a public offering)
  - Authorized denominations of \$100,000 or more and:
    - Are sold to no more than thirty-five persons each:
      - Has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment; and
      - Is not purchasing for more than one account or with a view to distributing the securities; or
    - Have a maturity of nine months or less.



# Disclosure Best Practices – Why Do We Care?

## Answer: SEC

- Rule 10b-5

- It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any [national securities exchange](#),
  - To employ any device, scheme, or artifice to defraud,
  - To make any untrue statement of a [material](#) fact or to omit to state a [material](#) fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
  - To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,
- in connection with the purchase or sale of any [security](#).

- Rules 15c2-12

- As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices...



# Disclosure Best Practices – Compliance Strategies

- Disclosure Compliance Policy
- Dissemination Agent – third party assists with compliance
- Continuing Disclosure filings to be made on EMMA
  - Electronic Municipal Market Access System
  - <http://emma.msrb.org/>
- Establish EMMA Account
  - Can set up reminders for when annual information statements (AIS) or audited financials are due to be published



# Disclosure Best Practices – Compliance Policy

- Contents
  - Primary Offering
    - Working Group
    - Scope and Process
    - Assembly of Current Information
    - Review/Approval Process for Accuracy/Completeness
  - Continuing Disclosure
    - Annual Financial Information and Operating Data
    - Event Notices
    - Posting/Tickler Systems
  - Other – Training; Update Policies; Website; Investors; Press Releases



# Roles of Financing Participants

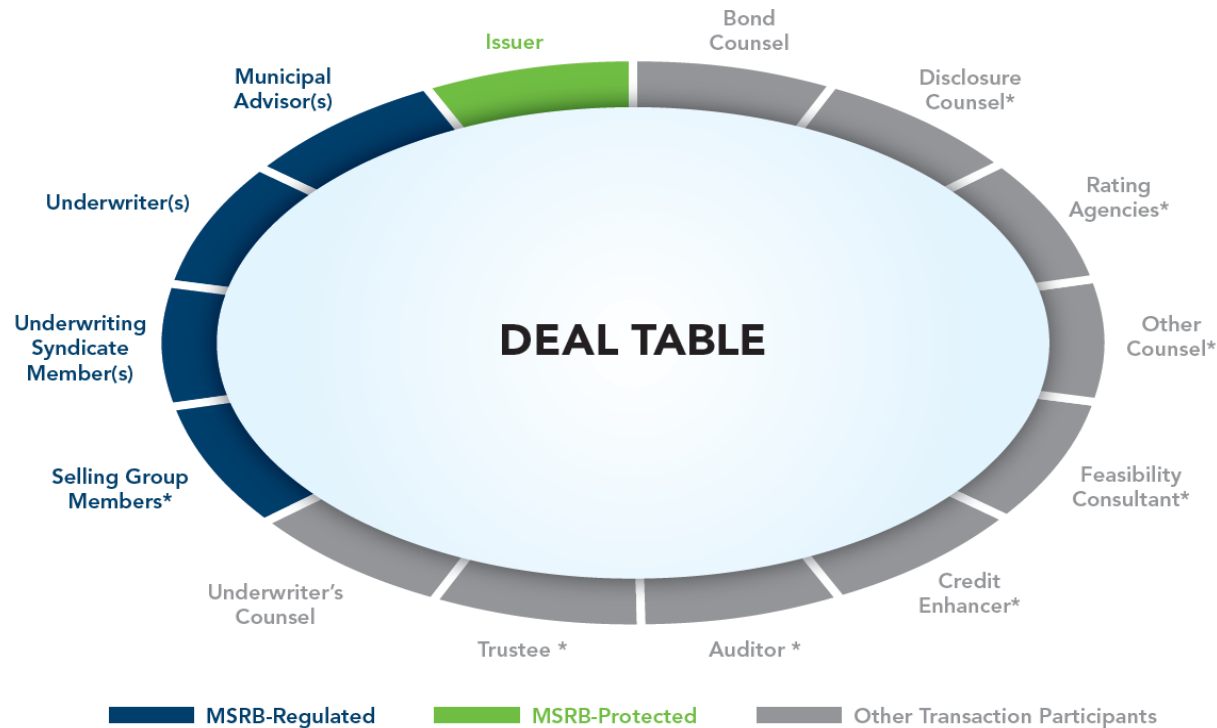
- Who are the participants?
- What are their roles?
- How are they hired?
- Do the participants change based upon bond sale method?





# Financing Participants

## Professionals Involved in a Negotiated Municipal Bond Financing Transaction



\*Participation depends upon type, size, and features of a transaction



# Roles of Financing Participants - The Issuer

- The Issuer is the public entity that is borrowing money through the “issuance”, or creation and sale, of securities
- The Issuer:
  - Defines the financing requirements, determines the method of sale
  - Sets and implements debt management policies and procedures
  - Determines available resources for payment of principal and interest of new debt issue
  - Selects and manages the financing team
  - Prepares offering document (if applicable) in consultation with the financing team
  - Works with the senior manager to determine how orders are filled or allotted to investors from the pricing order period
  - Determines participation of the senior managers and syndicate members’ liability in a negotiated issuance
  - Executes the purchase agreement with the senior manager
  - Adopts resolution and/or executes any trust indenture, loan agreement or other financing documents
  - Pays principal and interest on the securities as they become due
  - Complies with tax and other covenants included in the financing documents
  - Submits (or causes to be submitted) continuing disclosures to the MSRB’s Electronic Municipal Market Access (EMMA®) system under the issuer’s continuing disclosure agreement

# Roles of Financing Participants

## Rating Agencies

- Credit Rating Agencies exist for Investors, but are paid by the Issuers to provide an opinion on the strength of the security and risk of default on a particular issue of securities
- Credit Rating Agencies provide this opinion in the form of a “Rating” which is an indication of the credit quality of the securities/Issuer
  - The higher the credit rating, the stronger the credit quality, and the lower the interest rate paid by the Issuer
- These ratings are monitored by the rating agency as long as the bonds remain outstanding, are periodically reviewed and can change up or down over time

# Roles of Financing Participants Investors

- Purchase bonds
- Receive interest and principal payments from paying agent
- Influence deal structure through ongoing feedback with underwriter
- Conduct periodic / ongoing reviews of borrowers credit and financial position
- Trade bonds in secondary market (possibly)



# Roles of Financing Participants Bond Counsel

- Prepare bond resolution
- Provide Official Statement/disclosure preparation assistance
- Prepare various deal related legal documents
- Provide legal opinion to investors

# Roles of Financing Participants

## Underwriter

- Assist issuer with structure, term and timing of debt issuance
- Perform due diligence on issuer's prior continuing disclosure compliance (5 year lookback)
- Provide rating agency & bond insurer preparation assistance
- Refundings: Assist in structuring escrow, providing escrow security instructions (SLGS), coordinating open market security bid process (in conjunction with Bidding Agent), coordinate with other professionals on the defeasance of refunded bonds (verification agent, escrow agent, etc)
- Not a fiduciary to issuer/borrower but is bound by "fair dealing" requirements in securities laws
- Underwriter – Propose initial bond pricing scale based on comparable transactions, market conditions and market feedback. Coordinate bond sale process, manage order book, recommend pricing adjustments, allot bonds
- Sales Force – Market the Bonds to investors, provide feedback to underwriter, obtain orders for bonds



# Roles of Financing Participants

## Municipal Advisor

- Advises regarding debt structuring
- Recommends method of sale
- Assists with selection of Underwriter and other finance team members
- Advises regarding credit strategy and provides rating agency & bond insurer preparation assistance
- Price negotiation
- Has a legal fiduciary role to issuer/borrower



# Roles of Financing Participants Paying Agent / Trustee

- Authenticate bonds
- Receive interest and principal payments from Issuer
- Maintains records of investors and transmits interest and principal payments to investors
- In instances where a bond indenture and/or a trust indenture is utilized, a financial institution with trust powers will be designated as “Trustee”
- The Trustee protects the rights of bondholders by:
  - Acting in a fiduciary role for the benefit of bondholders (or “COPs” holders) in enforcing the terms of a trust indenture, where there is a trust indenture
  - Holding and investing moneys held in a construction fund, reserve fund or other funds that serve as security for payment of debt service on the securities
  - Representing the interests of security holders in the event of a default

# Roles of Financing Participants - Others?

- Feasibility Consultant
- Independent Auditors
- Verification Agent
- Escrow Agent (refundings)
- Bidding Agent (advance refunding escrow)
- Ohio Municipal Advisory Council (OMAC)
- Printer (for official statement)

# Questions?



# MyCPIM Password

