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PART 1—With Exhibits 1-5

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments on Proposed Amendments to Rule 15c2-12, SEC Rel. No. 34-80130 (File No. S7-01-17)

Ladies and Gentlemen:

Thank you for this opportunity to comment on the amendments proposed by the Securities and Exchange Commission to the Commission's Rule 15c2-12, 17 C.F.R. §240.15c2-12, Municipal securities disclosure.

I have been involved in varying capacities in the municipal securities market since 1973, and consider myself to be qualified to provide both an historical perspective and constructive comments. My experience includes, on one hand, working closely with issuers (and borrowers) as legal counsel and as financial advisor, and on the other hand, investing in municipal securities.

The Commission's proposal identifies key information that, when material, reasonable investors want to know, both in primary offerings and in the secondary market.[1] Reasonable investors in the secondary market would not want to purchase bonds, or want their bond funds to purchase bonds, issued by issuers that, since the date of bond issuance, entered into substantial undisclosed private debt, issued undisclosed private debt with a senior priority of payment, became the subject of an undisclosed crushing judicial award, or while in financial difficulty, modified the terms of other debt to avoid a default. Yet, today, there are issuers (and borrowers) that do not disclose such occurrences to the secondary market.

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[1] Although I am generally supportive of the content of the Commission's proposal, I am disappointed that the Commission is not proposing to eliminate the requirement for issuer disclosure of rating changes, given that the rating agencies now provide that same information to EMMA. The redundancy causes unnecessary burdens on issuers.

I also believe that the Commission has under estimated the amount of time that the proposal will require for compliance.

The proposal echoes in many key respects recognized and authoritative municipal securities market disclosure guidance provided over the past 40+ years by organizations representing both issuers and investors, as well as legal counsel.[2] The guidance is consistent across market segments consisting of both the "sell side" and the "buy side" of the municipal securities market. To illustrate my point, I quote from certain of the market guidance to confirm its consistency with the Commission's proposal.

To demonstrate just how pervasive this market guidance has been, and how widely it has been accepted,[3] I am attaching several Exhibits. Exhibit 1, which I prepared,

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[2] The organizations quoted in this letter are: The Government Finance Officers Association, the National Federation of Municipal Analysts, and the National Association of Bond Lawyers. Each association has a comprehensive membership across the nation and is recognized as authoritative.

GFOA's membership, consisting of state, local and federal treasurers, comptrollers, finance officers, auditors and other finance officials in the United States and Canada, is represented on its website as approximately 18,600 (including 1,750 associate members).

NFMA's membership includes approximately 1,400 municipal analysts from both the sell-side of the market (underwriters, broker-dealers, financial advisors) and the buy-side of the market (banks, mutual funds, bond insurance companies, and other insurance companies).

The National Association of Bond Lawyers has a membership of more than 1,000 bond lawyers.

[3] In 1979, the Municipal Finance Officers Association (the predecessor name of the Government Finance Officers Association) described the market wide participation in the preparation of the MFOA's **DISCLOSURE GUIDELINES**, as follows:

> we welcome the opportunity to note our appreciation of the time and energy the following groups contributed to the original project: American Bar Association, State and Local Government Accounting Committee of the American Institute of Certified Public Accountants, Dealer Bank Association, Public Securities Association, Securities Industry Association Public Finance Council, Association of the Bar of the City of New York, National Association of Counties, National Association of State Auditors, Comptrollers and Treasurers, National Conference of State Legislatures, National Governors' Association, National League of Cities, U.S. Conference of Mayors and the many other public interest, professional and governmental organizations which participated in the development of the Guidelines. MFOA particularly wishes to thank the National Science Foundation for funding … .
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> …
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> These Guidelines … are extremely significant developments in the municipal securities market. Only three years ago, some doubted that an entire industry could respond so effectively to the crucial issue of disclosure or that it could solve the difficult and complex problems related to that issue. Governmental issuers, investors, dealers, counsel, accountants and financial advisors deserve only the highest degree of praise for their concern and cooperation on these matters.
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> MFOA **DISCLOSURE GUIDELINES** at 4-6 (1979).

summarizes the broad recognition and acceptance of the market guidance. Exhibit 2 is a 1991 article published in the Municipal Finance Journal containing brief essays written by numerous municipal market leaders representing many disciplines in the market regarding the municipal securities market's far-reaching adoption of the Government Finance Officers Association's **DISCLOSURE GUIDELINES FOR STATE AND LOCAL GOVERNMENT SECURITIES** (the "GFOA **DISCLOSURE GUIDELINES**").[4]

Illustrating the continued vitality of market participation in the **DISCLOSURE GUIDELINES'** development, in 1991 GFOA recognized the following entities:

> As in the case of the previous editions of the *Guidelines*, numerous organizations contributed to the revisions process through their thoughtful suggestions and careful reviews of the Exposure Draft. Among those assisting were:
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> American Bankers Association, Corporate Trust Committee
> American Institute of Certified Public Accountants
> Association of Financial Guaranty Insurers
> City of Kansas City, Missouri
> County of Los Angeles, California
> County of Prince William, Virginia
> Fitch Investors Service, Inc.
> GFOA Committee on Accounting, Auditing and Financial Reporting
> GFOA Committee on Public Employee Retirement Administration
> Hunton & Williams
> Johnson County, Kansas
> Kutak Rock & Campbell
> Moody's Investors Service
> Municipal Securities Rulemaking Board
> National Association of Bond Lawyers
> National Association of State Auditors, Comptrollers and Treasurers
> National Council of Health Care Facilities Financing Authorities
> National Council of State Housing Agencies
> National Federation of Municipal Analysts
> Orrick, Herrington & Sutcliffe
> Public Securities Association
> State of Florida, Department of General Services
> United States Securities and Exchange Commission
>
> This edition, for all the hard work and hours spent by those mentioned above and by many others, represents yet another chapter in an on-going process of re-evaluation and revision.
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> GFOA **DISCLOSURE GUIDELINES** at vi (1991).

[4] The widespread market acceptance of the MFOA (and then GFOA) **DISCLOSURE GUIDELINES** and the changes in market practices toward application of the **DISCLOSURE GUIDELINES** are documented in Forbes & McGrath, "*Disclosure Practices in Tax-Exempt General Obligation Bonds: An Update*," 7 Mun. Fin. J. 207 (No. 3 Summer 1986). See also Petersen, Doty, Forbes &

Introduction to GFOA DISCLOSURE GUIDELINES

The GFOA **DISCLOSURE GUIDELINES** were published in four editions in 1976 [Exhibit 3 hereto], 1979 [Exhibit 5 hereto], 1988 [Exhibit 6 hereto] and 1991 [Exhibit 7 hereto]. In 1978, GFOA, then known as the Municipal Finance Officers Association ("MFOA"), published **GUIDELINES FOR USE BY STATE AND LOCAL GOVERNMENTS IN THE PREPARATION OF YEARLY INFORMATION STATEMENTS AND OTHER CURRENT INFORMATION** [Exhibit 4 hereto] ("MFOA **CONTINUING DISCLOSURE GUIDELINES**").

Each edition of the **DISCLOSURE GUIDELINES** went through careful and thorough drafting, market wide circulation, re-drafting and approval processes. As a member of the drafting committee for each edition of the GFOA **DISCLOSURE GUIDELINES**, as well as the MFOA **CONTINUING DISCLOSURE GUIDELINES**, throughout this entire period, together with Jeffrey Green and John Petersen, I am intimately familiar with the GFOA **DISCLOSURE GUIDELINES**.

The initial draft in the mid-1970s of the GFOA **DISCLOSURE GUIDELINES** (then known as the MFOA **DISCLOSURE GUIDELINES**) was the subject of hearings conducted across the country in Los Angeles, Chicago, Washington, Denver, Atlanta and Boston, as well as an extensive market-wide draft circulation and comment process.[5] Each edition of the GFOA **DISCLOSURE GUIDELINES** was approved by GFOA's Disclosure Task Force

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Bourque, "*Searching for Standards: Disclosure in the Municipal Securities Market*," 1979 Duke L.J. 1177 (1977).

Citing the Duke article, in 1979 MFOA described the **DISCLOSURE GUIDELINES** as leading to "a consistent pattern of improvement in the information provided by municipal securities issuers," as follows:

> Research on the effectiveness of the December 1976 Guidelines and the earlier exposure draft has demonstrated that state and local issuers are exercising this professionalism, for there is a consistent pattern of improvement in the information provided by municipal securities issuers. …
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> MFOA **DISCLOSURE GUIDELINES** at 2 (1979).

[5] This history is recorded the Preface to the 1976 edition of the MFOA **DISCLOSURE GUIDELINES** (and succeeding editions) and in articles in The Daily Bond Buyer, such as "*MFOA Committee Proposes Guidelines For Voluntary Disclosure to Investors*," The Daily Bond Buyer at 1 (Nov. 20, 1975); "*MFOA Plans 6 Seminars on Disclosure; Legal, Auditing Procedures on Agenda*," The Daily Bond Buyer at 21 (Feb. 17, 1976); "*Panelists Named For MFOA's April Disclosure Seminar*," The Daily Bond Buyer at 19 (March 10, 1976); and "*Simplification of Disclosure Guidelines Defies Experts at MFOA Discussion*," The Daily Bond Buyer at 2 (March 31, 1976).

For a history of the mid-1970s municipal securities market crisis and opposition to legislation that led to the development of the MFOA **DISCLOSURE GUIDELINES**, see the Chapter titled "*Profound Changes in the 1970s*" in R. Doty, **EXPANDING MUNICIPAL SECURITIES ENFORCEMENT: PROFOUND CHANGES FOR ISSUERS & OFFICIALS** (International Municipal Lawyers Association 2016), available at *www.IMLA.org*.

consisting of representatives of issuers, investors, counsel, dealers, financial advisors and others. Notably, each edition also was approved by GFOA's key Committee on Governmental Debt and Fiscal Policy and by GFOA's Executive Board.

MFOA provided the history of the **DISCLOSURE GUIDELINES** in the Preface to the 1976 edition, describing (at iii) the Guidelines as "designed to culminate in a set of disclosure standards," adding that the **DISCLOSURE GUIDELINES** identify "information … relevant to investors on most occasions for most [bond] issues," as follows:

> suggestions of information which may be disclosed in offerings of municipal securities. These guidelines are not intended to be legally binding. *Rather, they represent information that usually should be included in official statements because it would be relevant to investors on most occasions for most issues*.][Emphasis added.]

MFOA added (at iv) that "These guidelines represent an industry consensus on disclosure … ."

The 1991 GFOA **DISCLOSURE GUIDELINES** "recommend[ed]" information "for disclosure by issuers" "both at the time of issuance and throughout the lives of the securities," as follows (at vii):

> These Disclosure Guidelines for State and Local Government Securities (these "Guidelines") *make recommendations respecting information for disclosure by issuers* of state and local government securities, *both at the time of issuance and throughout the lives of the securities*, and respecting issuer procedures for the disclosure process. [Emphasis added.]

In the 1991 edition of the GFOA **DISCLOSURE GUIDELINES,** GFOA emphasized the widespread market participation in the **GUIDELINES** process and the participation and approval at GFOA's highest echelons, as follows (at v):

> In early April of 1990, a draft of tentative changes based on the Task Force's efforts was circulated to the GFOA Committee on Governmental Debt and Fiscal Policy and to the GFOA Executive Board. On April 27, acting on the recommendation of the Committee on Governmental Debt and Fiscal Policy, the Executive Board instructed that an Exposure Draft of the Guidelines be given broad circulation, comments be solicited, and that the Guidelines be prepared for publication. In July 1990, an Exposure Draft of the Guidelines was made generally available and distributed upon request to any interested party. Over 800 copies were sent out to issuers, attorneys, underwriters, advisors, analysts, and investors. Those receiving copies were asked to respond with comments by October 20.
>
> Many excellent and detailed suggestions were received as a result of this process and these were compiled by a drafting committee consisting of Messrs. Doty, Petersen and Green, which then recirculated a text reflecting the recommended changes to the Task Force, Governmental Debt and Fiscal Policy Committee, and GFOA Executive Board. On November 9, subsequent to a final review and additional changes made by the Task Force, the GFOA Executive Board approved the Disclosure Guidelines for publication as soon as they were ready.

The municipal securities market's acceptance of the GFOA **DISCLOSURE GUIDELINES** continues even today, despite the age of the document. For example, the **FEDERAL SECURITIES LAWS OF MUNICIPAL BONDS DESKBOOK**,[6] published by the National Association of Bond Lawyers, states that:

> The *Disclosure Guidelines* were last published in 1991, and, even though there have been many regulatory developments with respect to municipal securities since that time, the *Disclosure Guidelines* continue to have relevance today.

The **DESKBOOK** opines[7] that the GFOA **DISCLOSURE GUIDELINES** continue today to provide a starting point for drafting municipal securities official statements, as follows:

> A suggested approach to using the forms and voluntary guidelines contained in this chapter of the Deskbook is as follows. First, the drafter should refer to the *GFOA's Disclosure Guidelines for State and Local Government Securities.* Most official statements used in municipal securities offerings are organized in a manner that corresponds to the organizational structure of the *Guidelines* so the *Guidelines* provide a familiar roadmap for the drafter. …

The following are excerpts from the 1991 Edition of the GFOA **DISCLOSURE GUIDELINES** [Exhibit 7 hereto] in order to demonstrate the municipal securities market's deliberate and careful acceptance of and commitment to broad based disclosure by municipal securities issuers, in their offerings, regarding a comprehensive variety of issuer (and borrower) debt and other obligations, pending legal proceedings and changes in indebtedness. To demonstrate the consistency of the historical pattern over the years, footnotes refer to page numbers in the 1976 MFOA **DISCLOSURE GUIDELINES** and the 1978 MFOA **CONTINUING DISCLOSURE GUIDELINES**.

Excerpts from 1991 GFOA Disclosure Guidelines—Offering Disclosure

The following excerpts demonstrate GFOA's and the municipal securities market's strong endorsement of disclosure regarding a broad range and variety of issuer obligations and relevant changes relating thereto. For example, the GFOA **DISCLOSURE GUIDELINES** recommend disclosure respecting "long-term leases, lease-purchase obligations, installment purchase obligations, joint ventures, guaranteed debt, 'moral obligation' indebtedness, output or supply contracts, take or pay or similar contracts and other forms of contingency indebtedness."

[Section VII—Debt Structure, at 36][8]

> Variable rate debt, bond anticipation debt, and deep discount, zero coupon or other debt, the principal of or interest on which accretes over time, should be identified

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[6] National Association of Bond Lawyers, **FEDERAL SECURITIES LAWS OF MUNICIPAL BONDS DESKBOOK** at 1143 (6th ed. 2014).

[7] *Id*. at 1135.

[8] See the 1976 MFOA **DISCLOSURE GUIDELINES** [Exhibit 3 hereto] at pages 14-16.

> clearly. Describe *interest rate swaps* to which the issuer is a party bearing upon the issuer's ability to pay interest to investors … . The information furnished should also include a separate description of other commitments, *such as long-term leases, lease-purchase obligations, installment purchase obligations, joint ventures, guaranteed debt, "moral obligation" indebtedness, output or supply contracts, take or pay or similar contracts and other forms of contingency indebtedness and indebtedness that does not appear on the issuer's balance sheet*.
>
> … If the issuer *intends to issue additional indebtedness*, not yet fully authorized, the circumstances should be described. Describe indebtedness that may be incurred in accordance with a multi-year plan and relevant contingencies.
>
> The amount of indebtedness outstanding should be as of the latest practicable date, within the previous 120 days, with any major changes in debt position, such as any *new obligations issued during the interim*, appropriately indicated. [Emphasis added.]

§ § §

[Section IX—Government Financial Information, at 45, 48][9]

> *Describe any known facts that would significantly affect any financial information presented or the future financial operations of the issuer or enterprise.*
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> …
>
> If payments on outstanding securities or other obligations have been met through *loans from other governmental fund sources*, indicate the sources, the amounts involved, the purpose (as for payment of principal, interest or operating cost) and any commitments for repayment of the loans. [Emphasis added.]

The following excerpts express GFOA's and the municipal securities market's endorsement of disclosure of not only the results of legal proceedings, but also the pendency of proceedings that could "significantly affect" the issuer's "ability to perform its obligations."

[Section XI—Legal Matters, at 60][10]

> *Describe any pending judicial, administrative or regulatory proceedings that may significantly affect the issuer's or governmental enterprise's ability to perform its obligations to the holders of the securities being offered*, or that may result in a redemption or prepayment of the securities, including the effects of the legal proceedings on the securities being offered and on the source of payment therefor. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings, and the relief sought. [Emphasis added.]

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[9] See the 1976 MFOA **DISCLOSURE GUIDELINES** at [Exhibit 3 hereto] pages 18, 20.

[10] See the 1976 MFOA **DISCLOSURE GUIDELINES** [Exhibit 3 hereto] at page 24.

<u>Excerpts from 1991 GFOA Disclosure Guidelines—Annual Continuing Disclosure</u>

The following excerpts from the GFOA **DISCLOSURE GUIDELINES** sections on continuing disclosure establish GFOA's strong commitment to annual disclosure of the same or similar information that is disclosed in offerings, including "important factors related to the debt structure of the issuer or enterprise," the pendency of "proceedings that may significantly affect the issuer's or governmental enterprise's ability to perform its obligations to the holders of the securities outstanding," changes in indebtedness, including the authorization of "additional indebtedness" and "if the terms and conditions of the additional indebtedness affect the rights of holders of any outstanding securities … appropriate information as to the securities to enable investors to understand their rights."[11]

In the **CONTINUING DISCLOSURE GUIDELINES**, GFOA cross-referenced the relevant sections of the **DISCLOSURE GUIDELINES** for offerings for examples of information for disclosure.

[Continuing Disclosure—Section II—Description of the Issuer, Debt Structure & Finances, at 70][12]

> Information should be provided describing *important factors related to the debt structure of the issuer or enterprise*, including its authority to incur debt, trends in indebtedness, measures of debt burden, debt service requirements, and rates of retirement. *Sufficient information should be provided so that investors will be able to evaluate tax or other revenue sources in relation to the obligations or commitments of the issuer or enterprise*. … For *examples* of the types of information that may be appropriate, reference is made to Section VII of the *Disclosure Guidelines for Offerings* … . [Emphasis added.] [See Section VII quoted above.]

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[Section III—Legal Matters, at 72][13]

> *Describe any pending judicial, administrative or regulatory proceedings that may significantly affect the issuer's or governmental enterprise's ability to perform its obligations to the holders of the securities outstanding*, or that may result in a redemption or prepayment of the securities, including the effects of the proceedings on the securities outstanding and on the source of payment therefor. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the

[11] In 1978, MFOA "urge[d] state and local issuers to use this tool as an expression of their professionalism." 1978 MFOA **CONTINUING DISCLOSURE GUIDELINES** [Exhibit 4 hereto] at page v.

[12] See the 1978 MFOA **CONTINUING DISCLOSURE GUIDELINES** [Exhibit 4 hereto] at pages 11-12, 15-17.

[13] See the 1978 MFOA **CONTINUING DISCLOSURE GUIDELINES** [Exhibit 4 hereto] at page 20.

> proceedings, the relief sought, and the current status of the legal proceedings. [Emphasis added.]

[Section V—Changes in Indebtedness, at 74-76] [14]

> *If the issuer has authorized additional indebtedness since its last information statement*, (i) *briefly describe the transaction(s)* and securities or other indebtedness involved, the principal purpose(s) for which the indebtedness is authorized and the amount authorized for each such principal purpose; and (ii) *if the terms and conditions of the additional indebtedness affect the rights of holders of any outstanding securities, identify the securities or other indebtedness involved, and as to each new indebtedness containing terms and conditions affecting the rights of holders of any outstanding securities, give appropriate information as to the securities to enable investors to understand their rights*. Reductions in indebtedness also should be described. [Emphasis added.][15]
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> …

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[14] See the 1978 MFOA **CONTINUING DISCLOSURE GUIDELINES** [Exhibit 4 hereto] at pages 22-24.

[15] See also National Federation of Municipal Analysts, **RECOMMENDED BEST PRACTICES IN DISCLOSURE FOR DIRECT PURCHASE BONDS, BANK LOANS, AND OTHER BANK-BORROWER AGREEMENTS** at 3, 5 (2015), stating:

> Because the terms of the loan can pose risks similar to those posed by the obligor's credit profile, including the acceleration of principal ahead of stated maturity, disclosures for these financings should be as robust as the disclosures for public bond issues ***for obligors with publicly issued debt outstanding***. Furthermore, the growth of the bank loan market has enticed an increasingly diverse group of lenders to offer the product. With this expansion of lender sizes and types, the terms and conditions have become less standardized. New provisions and customized terms may introduce considerable risk to the obligor's credit profile and may also impact existing investors. [Emphasis in original.]
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> …
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> Bank loans—like a host of other financial products, including LOCs, liquidity facilities, and swaps—often include obligor payment provisions that change upon the occurrence of certain events. These "triggers" can result in the acceleration of debt payments or in the requirement for the payment or posting of collateral for termination payments, either of which can potentially impair obligor liquidity. Contract provisions and the obligor's current financial performance relative to those provisions dictate the extent to which potential payment events resulting from these triggers impact an obligor's liquidity and credit profile.

See also SEC Rel. No. 69515, *In the Matter of the City of Harrisburg, Pennsylvania* (May 6, 2013) regarding the substantial impacts that a City's contingent liabilities for the obligations of another entity can have upon the City's credit profile.

> If there have been *changes in the following matters*, describe the changes:
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> …
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> *Provisions with respect to the security and sources of payment* for the securities; the *priority of payment or lien in relation to any outstanding securities or other obligations of the issuer*; or *physical properties, assets or revenues* securing the securities and the provisions for their release or substitution.
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> …
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> *Purposes for which additional debt may be issued*; provisions permitting or restricting the issuance of additional securities or the incurrence of additional debt … .
>
> …
>
> Provisions in the securities outstanding, the *indenture or other authorizing or governing instruments* regarding specified events constituting defaults and the remedies therefor under the securities; whether any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the securities, indentures or instruments; or the degree to which the issuer is subject to suit for failure to perform its obligations to the holders of the securities or is subject to the enforceability of judgments resulting from suit. [Emphasis added.]

Excerpts from 1991 GFOA Disclosure Guidelines—Event Continuing Disclosure

GFOA not only made "recommendations" for annual disclosure by issuers, but also for disclosure of significant events broadly defined. For example, GFOA recommended disclosure "as promptly as possible" of "major developments about the issuer or governmental enterprise" not previously disclosed to investors.

GFOA added that "information concerning any rapid change or the occurrence of any other event that can be expected significantly to affect reasonable investment or trading decisions should be released by the issuer … immediately upon its availability in reliable form."

Notice that GFOA did not recommend that issuers simply publish entire documents, which might obscure effective disclosure, but rather disclose significant "information."

[Section VI—Information for Release Other Than on an Annual Basis, at 78-79] [16]

> *Release also should be made as promptly as possible of information concerning major developments about the issuer or governmental enterprise*, where the information has not been released previously pursuant to these *Guidelines. … [I]nformation concerning any rapid change or the occurrence of any other event that can be expected significantly to affect reasonable investment or trading decisions should be released by the issuer*, as recommended in Procedural Statement No.8 …, *immediately upon its availability in reliable form*. No fully comprehensive list can be prepared of

[16] See the 1978 MFOA CONTINUING DISCLOSURE GUIDELINES [Exhibit 4 hereto] at pages 25-26.

the types of information that should be released under this section. Some examples, however, of that information may include:

> **(1)** *The occurrence of a default or the probable likelihood of default in any outstanding indebtedness* of the governmental or conduit issuer or obligations of the issuer of credit enhancement, or a *declaration that an agreement or legal proceedings affecting the securities is invalid or unenforceable*, describing the indebtedness and creditors involved, the circumstances leading to the transaction, the relevant provisions of the authorizing and governing instruments, agreements, proceedings or other documentation, and the amounts of principal and interest involved. [Emphasis added.]
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> **(2)** *The occurrence of a sudden change or disruption of an apparently long-term nature in services providing revenues* that are relevant to the payment of outstanding securities, a *failure to pay expenditures* that were due in the preceding fiscal year and a discussion of the reasons therefor, or *any change or disruption in services or production that may have an important bearing upon the issuer's business* or enterprise activities, assets, revenues, liquidity, working capital, cash flow or profits.
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> **(3)** The *issuance of additional indebtedness* (including private placements).
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> …
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> **(9)** For governmental enterprises and conduit issuers, *relevant changes in assets, revenues, liquidity, working capital, cash flow, or profits, or in key management positions or policies; loss or gain of relevant customers; or relevant changes in contractual or working arrangements with third parties*. [Emphasis added.]

In summary, the GFOA **DISCLOSURE GUIDELINES** recommended that municipal securities issuers make disclosure in offerings, in annual disclosure statements and in event notices of the same type of information (and at times, much more) that the proposed amendments to SEC Rule 15c2-12 would require. In numerous respects, the GFOA **DISCLOSURE GUIDELINES** recommended even more extensive disclosures in both offerings and continuing disclosure.

The reason for the Commission's proposed Rule 15c2-12 amendments, of course, is that some issuers have not made disclosures about new obligations or financial difficulties, although many have. The result is that the secondary market for municipal securities has been deprived of information that GFOA and comprehensive segments of municipal securities market participants called for as long ago as the mid-1970s and then consistently throughout the 1980s and into the 1990s.

Given the lengthy history of repeated issuer and municipal securities market review and recommendation of such information for disclosure to investors, the Commission's proposal appears to be moderate and reasonable, in circumstances when the information is material.

[NFMA, Recommended Best Practices for General Obligation Bonds]

Beginning in 1990, the National Federation of Municipal Analysts began to develop disclosure guidance for municipal securities offerings and continuing disclosure on a sector-by-sector basis. Repeatedly, NFMA recommends disclosure of information regarding issuer (and borrower) obligations.

For purposes of illustration, NFMA's **RECOMMENDED BEST PRACTICES IN DISCLOSURE FOR GENERAL OBLIGATION AND TAX-SUPPORTED DEBT** (2001) [Exhibit 8 hereto] recommends the following disclosures:

[Debt and Financial Obligations, at 17-18, Indicated as relevant to both "Official Statement" and "Secondary Market"]

> Presentation of debt information should include *all types of debt*, such as general obligation, special assessment, sales tax revenue, etc., as well as *any other financial obligations* which are intended to be repaid over time, such as *leases* (including any capital leases that are subject to annual appropriation), *moral obligations* (where the entity promises, *subject to appropriation*, to replenish the debt service reserve fund), or *other major contingent liabilities* to secure other debt (i.e., state guarantees of local school district debt, local government deficiency make-up agreements for authorities etc.). *It is important to include any obligations that may have been issued by another entity if the repayment obligation is or could be that of the entity responsible for the disclosure document*. The intention is to present information that will *give the reader a full appreciation of the scope and magnitude of the set and contingent financial obligations owed by the issuer* and to allow for full evaluation of the debt burden facing the issuer's residents and taxpayers. [Emphasis added.]
>
>> Amount of authorized debt (as defined by state or local statutes) and amount outstanding as of the date of the disclosure.
>>
>> Itemize all outstanding long-term debt and other capital financial obligations that are secured by General Fund revenues. …
>>
>> Separately, identify other forms of debt outstanding that are not necessarily backed by the General Fund. Where the debt carries a secondary pledge of payment from the general fund (a "double barreled" bond), this should clearly identified. …
>>
>> Information regarding existing and executory swaps … .
>>
>> Any existing bond covenant actual and/or technical defaults.

In other words, like GFOA in its **DISCLOSURE GUIDELINES**, NFMA recommends disclosure by issuers of information regarding a wide-ranging universe of other obligations and the potential for impacts upon securities purchased or held by investors.

Materiality Considerations

Reportedly, there may be as many as 44,000 municipal securities issuers. Many of those issuers are small, unsophisticated communities. I have expressed concerns in the past regarding the capabilities of those issuers to navigate the sophisticated world of the securities laws.

Two recent developments mitigate my concerns substantially. First, since before, and especially following, the financial crisis, a robust market has developed for the provision of direct loans to municipal issuers by banks (often local banks) and other private lending sources. No longer will small, unsophisticated communities be foreclosed from accessing necessary funds for public projects, even outside the public market.

In addition, for those communities that choose to issue securities into the public market, the Dodd-Frank Act has made available to them services of sophisticated and well-qualified municipal advisors subject to a federal fiduciary duty to public entity issuers and subject to regulation by the Municipal Securities Rulemaking Board. Those municipal advisors are required to provide advice in the best interests of their public entity clients. This development, as well as trends in the provision of sophisticated services by legal and other professionals, means that municipal securities issuers now are able to have greater confidence in the quality of the services and advice they receive.

In the end, it is essential that issuers (and borrowers) make materiality judgments when the issuers (and borrowers) provide information to investors because the issuers (and borrowers), even when they are advised, are the parties who are in the best position to identify relevant information[17] and are the parties responsible for disclosure.[18]

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[17] An issuer's legal and financial advisors will not know all the information that is known by issuer officials. As the Commission's then-Director of the Office of Municipal Securities, Paul Maco, was quoted as stating:

> No one knows better than the issuer where the closets are, or what skeletons may be in the closets. No professional mind can read as to where they may be.
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> Transcript of The Bond Buyer's First Annual Buyers Symposium, June 7, 1995, comments of Paul S. Maco, Director of Office of Municipal Securities, Securities and Exchange Commission, reprinted in The Bond Buyer at 5A (Aug. 7, 1995).

[18] The materiality concept is not defined by the Securities and Exchange Commission, but rather by the Supreme Court. See *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449, 96 S.Ct. 2126, 2132, 48 L.Ed.2d 757 (1976); *Basic Inc. v. Levinson*, 485 U.S. 224, 232, 108 S.Ct. 978, 983, 99 L.Ed.2d 194 (1987). The Supreme Court's ultimate definitional authority is unavoidable in our legal system.

This responsibility was discussed by Robert Dean Pope in his book, **MAKING GOOD DISCLOSURE—THE ROLE AND RESPONSIBILITIES OF STATE AND LOCAL OFFICIALS UNDER THE FEDERAL SECURITIES LAWS**,[19] published by GFOA in 2001, as follows:

> This guide starts with what is generally believed to be the current state of the law: that
>
> **1.** state and local governments subject themselves to the requirements of the federal securities laws when they enter the public debt market;
>
> **2.** their officials bear significant responsibilities for making full and complete disclosure in the documents by which their debt is sold (and in the continuing disclosure information they are now likely to have to file); and
>
> **3.** while the prudent selection and use of experts can minimize liability and provide important protection, government officials, elected and appointed, always have a level of responsibility for disclosure that cannot be completely delegated.

The GFOA **DISCLOSURE GUIDELINES** did not undertake to define materiality, but rather recommended disclosure of information that investors "might" consider important. Nevertheless, municipal securities issuers were expected from the beginning to make judgments regarding what information is "material."

This was described in the **DISCLOSURE GUIDELINES** as follows:[20]

> These Guidelines recommend the inclusion in disclosure documents of information that an investor might consider of importance in making an informed investment decision. The term "material" is not used in these *Guidelines* because, as a legal concept, its application generally depends upon the particular facts and circumstances. …
>
> *It is possible that other information, not recommended in these Guidelines, may at times be relevant, and in such a case, should be provided.* Certain types of issuers or circumstances might require additional information in order to give an adequate description of those issuers or circumstances. [Emphasis added.]

Thus, the inevitability of issuer materiality decisions was recognized by GFOA, and even in the 1970s more than 40 years ago, by MFOA.[21] I am satisfied that, today,

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[19] R. Pope, **MAKING GOOD DISCLOSURE—THE ROLE AND RESPONSIBILITIES OF STATE AND LOCAL OFFICIALS UNDER THE FEDERAL SECURITIES LAWS** at 2 (Government Finance Officers Association 2001). Mr. Pope added (at 3):

> Some may bemoan the state of the law described above or even dispute its accuracy. No government issuer, however, can safely assume today that it is not generally responsible for the accuracy of its own disclosure when it is selling its own credit to investors.

[20] GFOA **DISCLOSURE GUIDELINES** at ix-x (1991).

[21] MFOA **DISCLOSURE GUIDELINES** at 1 (1976).

municipal issuers have available to them alternative markets for their debt (which incidentally, is why the bank loan disclosure issue has become so significant in recent years). If issuers wish to access the public market, they now have available to them skilled financial and legal advisors with obligations to provide sound advice.

Although there appear to be parties who believe that issuers (and borrowers) do not have sufficient systems in place to identify all of their obligations, I remain unconvinced that is the case. If it were the case, it would seem impossible for auditors to issue clean audit reports on issuer (and borrower) financial statements.

If issuers (or borrowers) are poorly-managed or lack competency to the degree that they cannot identify their material obligations or when they are experiencing financial difficulties, they should access the direct loan market instead. Local banks or other lenders will be in a better position to monitor those issuers (and borrowers).

Underwriter Due Diligence

The Commission has made clear its view that underwriters of municipal securities must form a reasonable basis for belief that issuers (and borrowers), while representing that they are entering into continuing disclosure undertakings, have complied with continuing disclosure undertakings in prior securities offerings.

The Commission previously expressed its view that financial advisors (who now are called municipal advisors) also are subject, under certain circumstances, to a requirement that they must form a reasonable basis for belief in issuers' (or borrowers') key representations in official statements.[22] That view now is almost 30 years old. The market deserves interpretive guidance regarding the Commission's current view on that subject in the age of municipal advisor regulation.

I understand and am sympathetic to concerns voiced by the underwriting community as to how, given the Commission's proposal, underwriters will be able to form a reasonable basis for belief in issuers' (and borrowers') continuing disclosure representations in official statements. I believe that the Commission could make a valuable

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See Doty and Petersen, "*The Federal Securities Laws and Transactions in Municipal Securities*," 71 Nw. L. Rev. 283 (1976).

[22] SEC Rel. No. 34-26100, 53 FR 37778, 37790 n. 92 (Sept. 28, 1988), states:

> In a competitively bid offering, the task of assuring the accuracy and completeness of disclosure is in the hands of the issuer, who usually will employ a financial adviser, which frequently is a broker-dealer. Ordinarily, financial advisers in competitively bid offerings publicly associate themselves with the offering, and perform many of the functions normally undertaken by the underwriters in corporate offerings and in municipal offerings sold on a negotiated basis. Thus, where such financial advisers have access to issuer data and participate in drafting the disclosure documents, they will have a comparable obligation under the antifraud provisions to inquire into the completeness and accuracy of disclosure presented during the bidding process.

contribution by providing illustrative guidance in this area.[23] Importantly, by providing examples of investigative activities that underwriters might consider, the Commission also could further the provision of more current interim financial information in offerings—a valuable step.

Based upon recognized and authoritative industry guidance, I suggest a four-step process that, in most facts and circumstances, should facilitate the formation of a reasonable basis for belief by underwriters in an issuer's compliance with prior continuing disclosure undertakings:

1. Satisfactory responses to questioning of and discussions with knowledgeable issuer (or borrower) officials who have responsibility for continuing disclosure compliance and underwriter review of issuer (or borrower) internal financial documents, such as budgets and interim financial statements

2. Review of issuer (or borrower) financial documents examined systematically by qualified independent third parties, namely audited financial statements, including the notes thereto, to identify outstanding obligations, and review of the results of subsequent events reviews by the issuer's (or borrower's) auditors with respect to obligations incurred after the end of the audited period, including discussions with the auditors

3. Review of obligation documentation (indentures, leases, contracts, court judgments) regarding their substance and potential impacts on relevant investors

4. Review of issuer (or borrower) filings on EMMA

To provide support for this methodology, I turn first to Robert Fippinger's treatise, **THE SECURITIES LAW OF PUBLIC FINANCE**, which states:[24]

> At the most general level of determining reasonable prudence the practitioner should consider:
>
> - whether there are red flags suggesting that the information in the official statement is misleading or omits material facts;
>
> - whether those participating in due diligence are critically evaluating the information they are given or are simply accepting the statements of the issuer or obligated person in the rush to complete the deal;

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[23] For example, see Financial Industry Regulatory Authority, Regulatory Notice 10-22, *Regulation D Offerings—Obligation of Broker-Dealers to Conduct Reasonable Investigations in Regulation D Offerings* (Apr. 2010) ("FINRA Notice 10-22").

[24] R. Fippinger, **THE SECURITIES LAW OF PUBLIC FINANCE** §7:5.2 (Practising Law Institute rev. #2, 8/13).

- whether those participating in due diligence seek outside sources of information in order to challenge or verify the information provided by the persons running the deal.

Assuming the absence of "red flags," Mr. Fippinger's analysis looks to discussions with issuer (and borrower) officials, to critical evaluations of that information, and to "outside sources of information in order to challenge or verify the information provided" by issuer (or borrower) officials. Audit reports and subsequent events reviews involve detailed investigative work by qualified independent third parties, namely the auditors. Obligation documentation sets forth relevant provisions for review and consideration as to potential impacts on relevant investors.

The American Bar Association and National Association of Bond Lawyers provides more specific applications of Mr. Fippinger's general outline. **DISCLOSURE ROLES OF COUNSEL IN STATE AND LOCAL GOVERNMENT SECURITIES OFFERINGS** lists a set of "basic" due diligence steps that investigating parties "should … consider[]" undertaking [Exhibit 9 hereto].[25] **DISCLOSURE ROLES OF COUNSEL** states the following:

> It is not possible to provide a comprehensive checklist. *There are certain basic categories of actions however that should be considered in connection with most financings* although the importance or relevance of any particular item will depend upon the facts and circumstances of the particular financing. Some are clearly more relevant to a revenue financing than a general obligation issue, and other distinctions will make these items, and others not mentioned, more or less important:
>
> - *Discussions with key executive and financial officials*, department heads, or personnel
> - *Discussions with board members*, if appropriate
>
> …
>
> - *Examination of current budgets* and past performance against budgets
> - *Examination of audits (including management letters) for five years, or other time period determined to be appropriate for the transaction, and income tax returns (where relevant), and discussions with external auditors*[26]

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25 American Bar Association and National Association of Bond Lawyers, **DISCLOSURE ROLES OF COUNSEL IN STATE AND LOCAL GOVERNMENT SECURITIES OFFERINGS** at 155-56 (3rd ed. 2009).

26 See FINRA Notice 10-22 at 8, which identifies the following "reasonable investigation practices" in Regulation D offerings, based upon a survey of dealer practices:

> Examining historical financial statements of the issuer and its affiliates, with particular focus, if available, on financial statements that have been audited by an independent certified public accountant and auditor letters to management.

For example, the "discussions with external auditors" might encompass, among other things, the issuer's (or borrower's) outstanding obligations, the relationship of those obligations to relevant securities, and in the event of financial difficulty, the occurrence of

- *Review of unaudited stub period financial statements*

  …

- *Examination of litigation documents* and litigation letters submitted in connection with audits, and *discussions with general and litigation counsel*[27]
- Examination of indentures, relevant borrowing agreements, lending agreements, major leases, major or key contracts, and other material purchase and sale contracts[28]

  …

- *Review of off-balance sheet items*

  …

- *Review of prior offering documents*, and an explanation of any revisions [Emphasis added.]

In other words, **DISCLOSURE ROLES OF COUNSEL** identifies as "basic" due diligence investigative activities the steps I outlined above—discussions with issuer (or borrower) officials, review of issuer internal documents (budgets), review of issuer financial statements and litigation documents subjected to examination by what Mr. Fippinger might define as "outside sources of information" (*i.e.*, auditors, litigation counsel) brought down for the interim period by auditors' subsequent events reviews, and finally, review of the identified obligation documentation and prior offering documents regarding their terms and potential impacts.

Once those steps are completed, the underwriters then should have, in most offerings, a reasonably documented basis, supported by recognized and authoritative market guidance and analysis, for determining whether issuers (or borrowers) have filed appropriate continuing disclosure information on EMMA.

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the events specified in the proposed Rule 15c2-12 amendment. Depending upon the circumstances, the discussions, by themselves, may or may not involve the auditors sufficiently in the offering to necessitate that the auditors undertake subsequent events reviews pursuant to AICPA pronouncements, especially when the auditors are well aware that their audit reports are being presented in the official statement.

[27] See FINRA Notice 10-22 at 9, which identifies the following "reasonable investigation practices," based upon a survey of dealers:

> Inquiring about pending litigation of the issuer or its affiliates.

[28] See FINRA Notice 10-22 at 8, which identifies the following "reasonable investigation practices," based upon a survey of dealers:

> Reviewing the issuer's contracts, leases, mortgages, financing arrangements, contractual arrangements between the issuer and its management employment agreements and stock option plans.

Summary

The proposed amendments to Rule 15c2-12 are consistent in terms of substance with recognized and authoritative municipal securities market guidance provided by both issuers and investors. That does not mean that there is not room for improvement, but rather that the general tenor and substance of the proposal is not outside established market guidance.

It would be beneficial for the Commission to publish interpretive guidance to underwriters (and if appropriate, municipal advisors) on how, given the proposal, especially following the Commission's MCDC Initiative, to form a reasonable basis for belief in an issuer's (or borrower's) continuing disclosure representations in official statements. Again, recognized and authoritative market guidance points to a constructive path.

Thank you for the opportunity to provide these comments. I hope they are informative and helpful.

Yours very truly,

Robert W. Doty

EXHIBITS TO LETTER OF COMMENT OF ROBERT DOTY

List of Exhibits (File S7-01-17)

Exhibit No.	Source	Title	Year Published
1	Robert Doty	Municipal Securities Market Recognition of Market Guidance	2017
2	Municipal Finance Journal	15-Year Anniversary of the Disclosure Guidelines for State and Local Government Securities	1991
3	Municipal Finance Officers Association	Disclosure Guidelines for State and Local Government Securities	1976
4	Municipal Finance Officers Association	Guidelines for Use by State and Local Governments in the Preparation of Yearly Information Statements and Other Current Information	1978
5	Municipal Finance Officers Association	Disclosure Guidelines for State and Local Government Securities	1979
6	Government Finance Officers Association	Disclosure Guidelines for State and Local Government Securities	1988
7	Government Finance Officers Association	Disclosure Guidelines for State and Local Government Securities	1991
8	National Federation of Municpal Analysts	Recommended Best Practices in Disclosure for General Obligation and Tax-Supported Debt	2001
9	American Bar Association and National Association of Bond Lawyers	Excerpt from Disclosure Roles of Counsel in State and Local Government Securities Offerings	2009

EXHIBIT 1

MUNICIPAL SECURITIES MARKET RECOGNITION OF MARKET GUIDANCE

MUNICIPAL SECURITIES MARKET RECOGNITION OF MARKET GUIDANCE

By Robert Doty
AGFS, Annapolis

With a reduced prescriptive role for the Securities and Exchange Commission in the municipal securities market in relation to the corporate securities market, municipal securities market participants give authoritative recognition and acceptance to municipal industry guidance as significant evidence of sound municipal industry customs, practices and standards of care.[1]

Working under the auspices of national market organizations, substantial national committees of diverse municipal market participants review and revise, over extensive periods, industry guidance for participants in municipal securities offerings. Typically, prior to final publication, the organizations also publish and make available broadly drafts of the guidance and seek and receive comments from participants across the market.

Municipal industry guidance regarding disclosure and due diligence in offerings consists of guidelines, best practices and white papers prepared voluntarily by recognized industry participants. The guidelines, best practices and white papers have become widely recognized as identifying information generally considered by investors to be important in making investment decisions and due diligence investigative activities that are recognized generally and are widely accepted as reasonable for offering participants to undertake.

Especially given the substantial diversity of municipal securities credits and structures, industry guidance is not intended to establish legal requirements or legal standards[2] for

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[1] Courts also have taken judicial notice of and applied industry guidance.

See *In the Matter of County of Nevada, et al.,* SEC Initial Decision Rel. No. 153 (Oct. 29, 1999) (financial advisor who undertook an underwriter's due diligence responsibilities failed to make disclosure in accordance with the **DISCLOSURE GUIDELINES FOR LAND-BASED SECURITIES** published by the California Debt and Investment Advisory Commission in 1996 after a process of industry drafting, review and comment).

In *SEC v. Fitzgerald, et al.*, 135 F. Supp. 2nd 992, 1020 (2001) (Findings of Fact and Conclusions of Law Regarding the Plaintiff's Application for a Permanent Injunction) (2001) (also finding an underwriter failed to comply with the **DISCLOSURE GUIDELINES FOR LAND-BASED SECURITIES**) ("The SEC also presented (and the Court took judicial notice of) the Disclosure Guidelines for Land-Based Securities ('Guidelines') published by the California Debt and Investment Advisory Commission. … Although that document does not create a legal obligation on underwriters… it does provide general standards that municipal securities underwriters should follow in issuing municipal debt on land developments.")

[2] The Government Finance Officers Association's **DISCLOSURE GUIDELINES** are industry publications and are not legal standards. The Guidelines expressly state: "The information recommended in these Guidelines for inclusion in official statements or other disclosure documents is intended to produce a document appropriate for informing investors. It is not intended, however, to create disclosure requirements or a legal obligation to provide any or

disclosure in every municipal securities offering in the sense of SEC "line-item" requirements set forth in SEC forms mandated in the corporate market. Having said that, it is not optional for issuers to disclose material information or for underwriters to conduct appropriate due diligence, Industry guidance is a key resource in identifying important information and reasonable investigatory actions. As discussed below, municipal market participants recognize the importance of familiarity with the industry guidance and of understanding and differentiating facts and circumstances in which specific industry guidance may not be applicable.

Following that pattern, during a national industry-wide review and comment process over almost a two-decade period, the Government Finance Officers Association ("GFOA"), an association of thousands of municipal securities issuer finance officials, published disclosure guidance for municipal securities offerings in four editions of GFOA's **DISCLOSURE GUIDELINES.** The most recent edition is the 1991 edition. Earlier editions were published in 1976, 1979 and 1988. The **DISCLOSURE GUIDELINES** are a recognized source of industry guidance based upon the recommendations of the national industry committees and the active market participation in their development.

The GFOA **DISCLOSURE GUIDELINES** success in changing market practices and GFOA's commitment to the **GUIDELINES** using a market wide process provided key

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all items of information … ." *See* Government Finance Officers Association's **DISCLOSURE GUIDELINES** at vii (4th ed. 1991).

The National Federation of Municipal Analysts' Best Practices and White Papers are industry publications and also are not legal standards. For example, the NFMA **DISCLOSURE HANDBOOK FOR MUNICIPAL SECURITIES** expressly states: "The Handbook was prepared on a sector-by-sector basis to highlight the important information needed to evaluate specific credit risk in the primary and secondary markets. The document is not a check list. Rather, the NFMA's goal is to promote on a voluntary basis more effective disclosure in the municipal marketplace." NFMA **DISCLOSURE HANDBOOK FOR MUNICIPAL SECURITIES** at i (1990); *see also* NFMA **DISCLOSURE HANDBOOK FOR MUNICIPAL SECURITIES** at i (1992).

The American Bar Association and National Association of Bond Lawyers' **DISCLOSURE ROLES OF COUNSEL IN STATE AND LOCAL GOVERNMENT SECURITIES OFFERINGS** is also an industry publication, not legal standards. It expressly states: "This Book is not intended to describe or create legal standards nor is it an advocacy document. It is an educational tool to inform members of the Bar and others about municipal securities disclosure practices and responsibilities." **DISCLOSURE ROLES OF COUNSEL IN STATE AND LOCAL GOVERNMENT SECURITIES OFFERINGS** at xi (2nd ed. 1994); *see also* **DISCLOSURE ROLES OF COUNSEL IN STATE AND LOCAL GOVERNMENT SECURITIES OFFERINGS** at xiv (3rd ed. 2009).

arguments against legislative proposals in the 1970s for greater regulation of municipal issuers. In that connection, GFOA's representative testified, as follows:[3]

> We do not assert that disclosure documents or procedures in the municipal market met a corporate standard prior to the turmoil of this past fall. Nor is it asserted that in the past 3 months all problems have been resolved. However, it is believed that in a very short period of time, *by combining many diverse interests, the municipal market has shown itself capable of developing a workable framework for disclosure. Our policy has been and continues to be to work for improved disclosure, because it makes economic and ethical sense to better inform investors and taxpayers. Doing so in the most efficient manner is also in their interest*, and I think it's important for all of us to recognize at the State and local level particularly, that we are responsible to both investors and taxpayers. In many instances, this is the same person. That investor is one of our taxpayers and we are aware of that and it is good business for us to protect his interest in the most efficient manner possible. [Emphasis added.]

More recently, **BEST PRACTICES** and **WHITE PAPERS** published by the National Federation of Municipal Analysts ("NFMA") have provided more specific disclosure guidance often directed to disclosure regarding securities in particular market sectors or regarding specific subject areas. NFMA's industry guidance publications also are products of national industry committees and comment processes. The NFMA publications are recognized in the municipal market as important sources of industry guidance for issuers and underwriters to use in making disclosure to investors. NFMA's membership includes approximately 1,400 municipal analysts from both the sell-side of the market (underwriters, broker-dealers, financial advisors) and the buy-side of the market (banks, mutual funds, bond insurance companies, and other insurance companies).

The foregoing guidance is "voluntary" in the sense that it is not prescribed by statute or regulation, as in the case of the SEC's "line item" regulatory approach prevailing in the corporate securities markets.

Nevertheless, having said that, the "voluntary" character of the guidance does not mean that it is "optional" to disclose relevant and important information to investors. Neither does it mean that it is "optional" for underwriters to undertake reasonable due diligence investigative steps regarding offering documents and other information the underwriters deliver to investors in municipal securities offerings.

For example, in enforcement actions focused on an alleged failure to disclose a review and criticism of feasibility projections by an independent consultant, the SEC stated:

> While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a "heightened obligation" to take steps to ensure adequate disclosure. … Industry standards at the time, as evidenced by, among other

3 *Hearings on S. 2969 and S. 2574 Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs*, 94th Cong., 2nd Sess., at 209-210 (Feb. 24-26, 1976), Statement of S. Grady Fullerton, Harris County, TX, Auditor, Member of the Executive Board and Former President, Municipal Finance Officers Association.

> sources, the *Government Finance Officers Association's 1991 "Disclosure Guidelines for State and Local Government Securities*," suggest that Official Statements should include disclosure of financial feasibility reports or any other reports or studies known to the issuer that may have a significant bearing on the conclusion of feasibility of the project. [Emphasis added.]
>
> [*In the Matter of Piper Jaffray & Co., et al*., SEC Rel. Nos. 33-9472, 34-70804 (Nov. 5, 2013. See also *In the Matter of Greater Wenatchee Regional Events Center Public Facilities District, et al*., SEC Rel. Nos. 33-9471 (Nov.2013) ("A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision.")]

Supporting the Commission's approach, GFOA [at the time under the name "Municipal Finance Officers Association, or "MFOA"] stated in the initial edition of the **DISCLOSURE GUIDELINES** that it:

> intended that these standards would provide protection to investors through increased disclosure and through standardization of disclosure practices.
>
> [MFOA **DISCLOSURE GUIDELINES** at iii (1st ed. 1976).]

In **DISCLOSURE ROLES OF COUNSEL,** the National Association of Bond Lawyers and American Bar Association described the GFOA **DISCLOSURE GUIDELINES** as "A product of a successful effort by experts among issuers and throughout the industry to establish general industry guidelines for disclosure," adding:

> while disclosure of particular items suggested in the Disclosure Guidelines is not mandatory, it is good practice for counsel to consider the basis for omitting any suggested item prior to exclusion.
>
> [**DISCLOSURE ROLES OF COUNSEL** 1st ed. at 77 (1987), 2nd ed. at 80 (1994), "a reflection of the industry's views, an assessment that may be of particular assistance in the process of disclosure;" at 81, "Counsel … should develop a working knowledge of the *GFOA Guidelines*, the *NFMA Handbook*, and other industry materials").]

Thus, industry guidance is recognized generally throughout the municipal securities market as identifying information generally relevant for disclosure to investors and due diligence activities that are prudent to undertake. As stated by the National Association of Bond Lawyers and American Bar Association, when one departs from generally recognized market guidance, it is "good practice" to "consider the basis" for the departure in a manner that can be articulated with sound reasoning based upon the specific facts and circumstances of the transaction at hand.

Disclosure Roles of Counsel

An important source of industry guidance is **DISCLOSURE ROLES OF COUNSEL IN STATE AND LOCAL GOVERNMENT SECURITIES OFFERINGS**. The publication is recognized as an important source of industry guidance in the municipal securities market for issuers and underwriters, as well as counsel advising them. The guidance has been developed through sponsorship of the National Association of Bond Lawyers and a section and committee of the American Bar Association over a period of more than 20 years. Its development occurred through intensive work by substantial committees consisting of leading municipal industry bond counsel and underwriter counsel. The first edition was published in 1987, and the second was published in 1994. The current edition was published in 2009.

The 1994 second edition of **DISCLOSURE ROLES OF COUNSEL** identified [at 189-91] more than 60 lawyers from the American Bar Association and the National Association of Bond Lawyers who had served as "Project Personnel." Additional leading lawyers worked on the third edition.

The Forward to the 2009 edition of **DISCLOSURE ROLES OF COUNSEL** was written by Robert Fippinger, formerly a senior partner in Orrick Herrington, a leading national bond counsel firm, and a former member of the Municipal Securities Rulemaking Board. Mr. Fippinger received from the National Association of Bond Lawyers the Bernard P. Friel Medal for distinguished service in public finance for his two-volume treatise, **THE SECURITIES LAW OF PUBLIC FINANCE**.

Illustrating the authoritative status of **DISCLOSURE ROLES OF COUNSEL**, Mr. Fippinger stated in the Forward [at xi-xii] that the publication "has served as a cornerstone of the municipal securities market regulatory system," adding that the book provides "an invaluable source of authoritative guidance by the leading practitioners in the field."

The **FEDERAL SECURITIES LAWS OF MUNICIPAL BONDS DESKBOOK**, published by the National Association of Bond Lawyers, describes **DISCLOSURE ROLES OF COUNSEL** as "an authoritative and comprehensive guide to the disclosure obligations of each party involved in municipal securities," states that **DISCLOSURE ROLES** "methodically and thoughtfully examines the disclosure obligations of the key parties in a bond offering," and states that **DISCLOSURE ROLES** discusses "disclosure issues" "in a wide variety of practical settings that illustrate *how disclosure is to be made, by whom, and of what*."

> [National Association of Bond Lawyers, **FEDERAL SECURITIES LAWS OF MUNICIPAL BONDS DESKBOOK** at 1118 (6th ed. 2014).] [Emphasis added.]

The National Association of Bond Lawyers advertised that **DISCLOSURE ROLES OF COUNSEL** is:

> Described as "*an indispensable reference*," the Third Edition has already moved to the ABA Best Seller list.
>
> [National Association of Bond Lawyers, Advertisement atwww.nabl.org/newsroom/819 (Feb. 2, 2013).] [Emphasis added.]

The American Bar Association advertised that **DISCLOSURE ROLES OF COUNSEL**:

> explains … what diligence and disclosure activities may be appropriate. The book is intended to *assist lawyers in addressing … what advice counsel should provide to their clients* regarding their responsibilities for disclosure.

[American Bar Association, Advertisement at apps.americanbar.org/abastore (Feb. 2, 2013).] [Emphasis added.]

GFOA Disclosure Guidelines

In 1976, GFOA [then known as the "Municipal Finance Officers Association" or "MFOA"] described the original process in the mid-1970s, at the time of the New York City financial crisis, leading to the first edition of the **DISCLOSURE GUIDELINES.**

In describing how the important "voluntary" disclosure system began in municipal securities market, GFOA stated that the **DISCLOSURE GUIDELINES** was "designed to culminate in a set of disclosure standards," "represent information that usually should be included in official statements because it would be relevant to investors on most occasions for most issues" and "represent an industry consensus on disclosure." GFOA provided important historical information, as follows:

> During the past two years, disclosure on municipal bond offerings has been a topic of much discussion. The Municipal Finance Officers Association (MFOA) anticipated this issue and in 1974, they began work under a National Science Foundation Grant to study a variety of disclosure questions. One area of this project was *designed to culminate in a set of disclosure standards*. *MFOA intended that these standards would provide greater protection to investors* through increased disclosure and *through standardization of disclosure practices*. In November 1975, an exposure draft of *Disclosure Guidelines for Offerings of Securities by State and Local Governments* was released for public discussion and comment.
>
> The draft guidelines received wide dissemination, and *there was strong interest in their improvement and ultimate market acceptance*. During 1976, MFOA sponsored a series of seminars for discussion of the guidelines and of a broad range of disclosure issues. A digest was prepared of the many excellent written comments that were received by MFOA. *A Revision Drafting Committee, consisting of representatives of issuers, dealers, investors and professional groups, was appointed to review the comments and to revise the draft*. The MFOA Committee on Governmental Debt and Fiscal Policy worked closely with this Revision Drafting Committee and with the MFOA Executive Board in producing the present guidelines.
>
> The guidelines in this publication were approved and commended for use by municipal bond issuers on December 4, 1976, by the MFOA Executive Board. They are suggestions of information which may be disclosed in offerings of municipal securities. These guidelines are not intended to be legally binding. Rather, *they represent information that usually should be included in official statements because it would be relevant to investors on most occasions for most issues*.
>
> * * *
>
> *These guidelines represent an industry consensus on disclosure*, and are a significant improvement over the exposure draft. They will be subject to periodic review and updating as experience is gained in their use.
>
> [MFOA, **DISCLOSURE GUIDELINES)** at iii-iv (1st ed. 1976).] [Emphasis added.]

Fifteen years later, GFOA stated that, as part of the broad industry review and comment process for the 1991 edition:

> In early April of 1990, a draft of tentative changes based on the Task Force's efforts was circulated to the GFOA Committee on Governmental Debt and Fiscal Policy and to the GFOA Executive Board. On April 27, acting on the recommendation of the Committee on Governmental Debt and Fiscal Policy, the Executive Board instructed that an Exposure Draft of the *Guidelines* be given *broad circulation, comments be solicited*, and that the *Guidelines* be prepared for publication. In July 1990, an Exposure Draft of the *Guidelines* was *made generally available and distributed upon request to any interested party. Over 800 copies were sent out to issuers, attorneys, underwriters, advisors, analysts, and investors*. Those receiving copies were asked to respond with comments by October 20.
>
> [GFOA **DISCLOSURE GUIDELINES** at v (4th ed. 1991).] [Emphasis added.]

The 1991 **GUIDELINES** added that:

> The [1976] *Disclosure Guidelines for Offerings* were a set of suggestions of information that *should be considered for inclusion in official statements* because *it was thought to be relevant to investors on most occasions for most issues*. They were suggestions and, as such, were not intended to be legally binding. *They did, nonetheless, represent a consensus of municipal bond market participants regarding disclosure*.
>
> *Research* on the effectiveness of the December 1976 *Guidelines* and the earlier exposure draft *demonstrated a consistent pattern of improvement in the information contained in official statements provided by municipal securities issuers*.[4]
>
> [GFOA **DISCLOSURE GUIDELINES** at C-2 to C-3 ("MFOA intended that these guidelines would provide protection to investors through improved disclosure and *greater standardization of disclosure practices*.")] [Emphasis added.

The **GUIDELINES** identified dozens of market participants who had worked on the **GUIDELINES** in successive editions, and almost two dozen industry organizations that provided comment.

[GFOA **DISCLOSURE GUIDELINES** at Appendix C (4th ed. 1991).]

Shortly, after the release of the 1991 edition of the **DISCLOSURE GUIDELINES**, the Securities and Exchange Commission and its staff recognized the authoritative status of the

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[4] The **DISCLOSURE GUIDELINES** [at C-3] stated "Initial research on this improvement was published in Petersen, Doty, Forbes & Bourque, 'Searching for Standards: Disclosure in the Municipal Securities Market,' 1979 Duke L .J. 1177 (1976)."

The significant improvements in municipal market disclosure practices following the publication of the GFOA **DISCLOSURE GUIDELINES** were documented further in Forbes & McGrath, "Disclosure Practices in Tax-Exempt General Obligation Bonds: An Update," 7 Mun. Fin. J. 207 (No. 3 Summer 1986).

guidance provided in the **GUIDELINES**. For example, in the SEC **STAFF REPORT ON THE MUNICIPAL SECURITIES MARKET** at 24 (Sept. 1993), the Commission's staff stated that the **GUIDELINES** "identify information that over the years has been important for disclosure in most instances" and "presently serve as an industry standard for disclosure."

Even before the release of GFOA's 1991 edition of the **DISCLOSURE GUIDELINES**, the SEC recognized that the **GUIDELINES** "are followed by many issuers:"

> Municipal issuers have increased substantially the quality of disclosure contained in official statements. The voluntary guidelines for disclosure established in 1976 by the Government Finance Officers Association ("GFOA"), *which are followed by many issuers*, permit investors to compare securities more readily and greatly assist issuers in addressing their disclosure responsibilities.
>
> SEC Rel. No. 34-26100, 53 FR 37778-01 at 37780 (Sept. 28, 1988).] [Emphasis added, footnotes omitted.]

The **DISCLOSURE GUIDELINES** gained rapid acceptance and respect in the municipal securities industry. A contemporary and respected observer, Joseph Daley, a partner in the then-leading bond counsel firm of Mudge Rose Guthrie & Alexander, stated in his book, **A GUIDE TO MUNICIPAL OFFICIAL STATEMENTS**, shortly after the publication of the 1979 edition of the **GUIDELINES**, as follows:

> Whether they were a cause or an effect of the efforts of attorneys, accountants and fiscal officers toward increased disclosure by municipal issuers, *the Guidelines have been the most influential work in the field*. They represent an efficient and effective effort by those who know the problem best.
>
> [J. Daley, **A Guide to Municipal Official Statements** at 92 (Law & Business, Inc./Harcourt Brace Joyanovich NY 1980).] [Emphasis added.] [See also R. Pope, Making Good Disclosure—The Roles and Responsibilities of State and Local Officials Under the Federal Securities Laws (Government Finance Officers Association, Chicago, IL 2001) at 1 ("Through its conferences, seminars, publications, policies, and, above all, its *Disclosure Guidelines for State and Local Government Securities* (the *"Disclosure Guidelines"),* the GFOA has advanced the awareness of state and local officials and provided them with important guidance."), 16 ("Documents like the GFOA *Disclosure Guidelines* list matters that are commonly regarded as material in municipal offerings … .").]

Following publication of the 1991 edition of the GFOA **DISCLOSURE GUIDELINES**, the Municipal Finance Journal, a widely-read journal recognized in the municipal market as authoritative, published a commemorative series of brief essays dedicated to the **GUIDELINES** by a number of leading municipal market participants. The editor of the Municipal Finance Journal, W. Bartley Hildreth, is a member of the Municipal Securities Rulemaking Board.

> ["Government Finance Officers Association, 15-Year Anniversary of the *Disclosure Guidelines for State and Local Government Securities*" 12 Mun. Fin. J. at 1 (No. 4 Winter 1991).]

The following are a few excerpts of the views of some of those participants published in the Municipal Finance Journal:

> Richard Y. Roberts, Commissioner, U.S. Securities and Exchange Commission, described the GFOA Disclosure Guidelines as "widely accepted as a touchstone for municipal disclosure" and observed that "Although the guidelines profess not to suggest legal standards for disclosure, … in many cases [the **GUIDELINES**] reflect sound industry practice that should not be casually dismissed." [at 2]
>
> John Petersen, Senior Director, Government Finance Officers Association, stated that "the guidelines are the standard by which disclosure documents and practices are judged." [at 4-5]
>
> Claire Cohen, Executive Managing Director, Fitch Investors Service, Inc., concluded that "acceptance [of the Guidelines] appears to be complete," "[p]erhaps the most significant impact of the Disclosure Guidelines is its general acceptance," and "acceptance and use of the Disclosure Guidelines has produced a common understanding of the information necessary to assess government credit." [at 8]
>
> Richard B. Dixon, Chief Administrative Officer, County of Los Angeles, and President, Government Finance Officers Association, stated regarding market acceptance of the **GUIDELINES** that "The introduction of the Disclosure Guidelines greatly improved disclosure documents and practices." [at 9-10]
>
> Robert Fippinger, Partner, Orrick, Herrington & Sutcliffe, stated that "standardization improves the efficiency of the information flow to the marketplace" and referred to the **DISCLOSURE GUIDELINES** as "provid[ing] a lifeline for the substantial segment of the industry that had not been following the disclosure pattern of the public authorities and similar issuers." [at 10-14]
>
> Jeffrey S. Green, Deputy General Counsel, The Port Authority of New York and New Jersey, referred to the Guidelines' "widespread acceptance as an industry standard," adding that "Voluntary self-regulation can only work when the guidelines' recommendations, combined with independent professional judgment, create widely accepted standards of conduct." Mr. Green stated that "the guidelines recommend the inclusion of information that has been identified as important through a repeated thorough review over a period of more than 15 years" and "those preparing disclosure documents … should have close familiarity with the substance of the guidelines." [at 14-16]
>
> John Gunyou, Finance Commissioner, State of Minnesota, stated that "The Disclosure Guidelines represents a significant touchstone." [at 16-17]

Market practitioners continue to believe that the GFOA **GUIDELINES**, despite their age, continue to provide useful guidance today.

> [National Association of Bond Lawyers, **FEDERAL SECURITIES LAWS OF MUNICIPAL BONDS DESKBOOK** at 1143 (6th ed. 2014) ("The *Disclosure Guidelines* were last published in 1991, and, even though there have been many regulatory developments with respect to municipal securities since that time, the *Disclosure Guidelines* continue to have relevance today."); Pope,

"*The Origins of Good Disclosure: John Petersen and the GFOA Disclosure Guidelines*," 33 Mun. Fin. J. at 55-56 (Winter 2013) ("examples of clear advice important to issuers today").]

NFMA Best Practices & White Papers

BEST PRACTICES and **WHITE PAPERS** published by the National Federation of Municipal Analysts ("NFMA"), which also are products of national industry committees and comment processes, are recognized in the municipal market as an important source of industry guidance for issuers and underwriters to use in making disclosure to investors by market sectors and regarding specific subject matter.

For example, in a publication titled **QUESTIONS TO ASK BEFORE YOU APPROVE A BOND ISSUE: A POCKET GUIDE FOR ELECTED AND OTHER PUBLIC OFFICIALS**, prepared by the National League of Cities; National Association of Counties; National Association of State, Auditors, Comptrollers and Treasurers; and Government Finance Officers Association, and disseminated by those organizations and 20 other listed national associations representing various categories of state and local governments (*e.g*., general governments, public power, education, development finance, housing), as well as the American Bankers Association and a forerunner of the Securities Industry and Financial Markets Association, provided to state and local officials "A list … identifying resources on good disclosure practices and requirements under the federal securities laws." The list includes "disclosure guidelines" published by, among others, the Government Finance Officers Association and the National Federation of Municipal Analysts and "disclosure publications" published by the National Association of Bond Lawyers.

DISCLOSURE ROLES OF COUNSEL also recognized the authoritative status of both the GFOA **DISCLOSURE GUIDELINES** and NFMA's publications as "useful references and starting points in determining the appropriate elements of disclosure under particular circumstances," as follows:

> Although municipal issuers do not receive direct guidance from SEC staff on individual disclosure documents, *they can find guidance in a variety of other sources*. These include *market practices, various treatises, industry group statements on best practices … .*
>
> * * *
>
> Organizations such as GFOA and NFMA have developed extensive voluntary disclosure guidelines for primary offerings of municipal securities. These voluntary guidelines *can be useful references and starting points in determining the appropriate elements of disclosure* under particular circumstances.
>
> [**DISCLOSURE ROLES OF COUNSEL** at 32, 153, 155 (3d ed. 2009); at 79 ("Numerous industry groups have analyzed disclosure responsibilities and have suggested the types of information they deem appropriate for disclosure in primary offerings of municipal securities, as well as for continuing disclosure. In addition to the *GFOA Guidelines,* the most significant of these efforts aimed at initial offerings is the

> NFMA's *Disclosure Handbook For Municipal Securities* (1992) (the *"NFMA Handbook")."*) (2nd ed. 1994).] [Emphasis added.]

In 1994, the Securities and Exchange Commission observed that: "Spurred by the New York City fiscal crisis in 1975 and the Washington Public Power Supply System defaults, *participants in the municipal securities market have developed extensive guidance to improve the level and quality of disclosure* in primary offerings of municipal securities … ." The Commission described the GFOA **DISCLOSURE GUIDELINES** as "extensive voluntary guidelines" that "have received widespread acceptance and, among a number of larger issuers, have been viewed as 'in essence obligatory rules.'" [citing Harlan E. Boyles, Treasurer, State of North Carolina.] The Commission also cited NFMA's guidance as positive guidance in specific sectors. The Commission stated, "*The guidelines prepared by the GFOA and NFMA provide a generally comprehensive roadmap for disclosure in offering statements* for municipal securities offerings."

> [SEC Rel. No. 33-7049; 34-33741, 59 FR 12748, 12750-51, n. 33 and accompanying text (March 17, 1994); see also SEC **REPORT ON THE MUNICIPAL SECURITIES MARKET** at 56 (July 31, 2012) citing the 1994 SEC Release as follows: "In 1994, the Commission recognized that there were *extensive industry disclosure guidelines that market participants followed* in preparing official statements for municipal securities offerings."] [Emphasis added.]

Summary

In summary, throughout the municipal securities industry, **DISCLOSURE ROLES OF COUNSEL**, the GFOA **DISCLOSURE GUIDELINES** and NFMA's **BEST PRACTICES** and **WHITE PAPERS** are recognized and accepted generally as authoritative industry guidance that should be considered and applied in making disclosure and conducting due diligence investigations.

All of the foregoing sources are recognized as authoritative sources of industry guidance in the municipal market.

This is illustrated in the **FEDERAL SECURITIES LAWS OF MUNICIPAL BONDS DESKBOOK**, published by the National Association of Bond Lawyers. The **DESKBOOK** demonstrates the high regard with which all of the foregoing market guidance publications are held by market practitioners.

The **DESKBOOK** expressed the view that drafters of offering documents "should" refer to each of those guidance sources in the process of preparing offering documents, as follows:

> Even though there are no directly applicable line-item disclosure guidelines for municipal securities offerings, summaries of certain of the SEC's forms and summaries of certain voluntary guidelines are included in this Deskbook because these forms and guidelines often inform and shape conduct in the municipal securities marketplace. Further, these forms and voluntary guidelines often can be *useful references and starting points in determining the appropriate elements of disclosure under particular circumstances.*

> A suggested approach to using the forms and voluntary guidelines contained in this chapter of the Deskbook is as follows. *First, the drafter should refer to the GFOA's Disclosure Guidelines for State and Local Government Securities.* Most official statements used in municipal securities offerings are organized in a manner that corresponds to the organizational structure of the *Guidelines* so the *Guidelines* provide a familiar roadmap for the drafter. *Second, the drafter should turn to other resources contained in this chapter of the Deskbook for more specialized treatment of certain topics. The NABL and NFMA resources are excellent tools for this more specialized treatment.*
>
> [National Association of Bond Lawyers, **FEDERAL SECURITIES LAWS OF MUNICIPAL BONDS DESKBOOK** at 1135 (6th ed. 2014).][Emphasis added.][5]

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[5] See also **DISCLOSURE ROLES OF COUNSEL** citing the **GUIDELINES** at, *e.g.*, 153, 201 (3rd ed. 2009), at 4, 50 ("Guidelines prepared by the GFOA, the NFMA and other municipal market groups are viewed by many counsel as offering significant assistance in assessing materiality and determining appropriate disclosure content."), 79 ("The Commission has recognized the *GFOA Guidelines,* together with the *NFMA Handbook,* as materials that 'assist issuers in fulfilling their current obligations under the general antifraud provisions of the federal securities laws.'"), 80-81 (citing then-SEC Commissioner Edward Fleischman on the importance of professional judgment and stating "Counsel heeding Commissioner Fleishman's advice should develop a working knowledge of the *GFOA Guidelines,* the *NFMA Handbook,* and other industry materials."), 118, 120 n. 311, 137-38 (2nd ed. 1994).

EXHIBIT 2

MUNICIPAL FINANCE JOURNAL, 15-YEAR ANNIVERSARY OF THE DISCLOSURE GUIDELINES FOR STATE AND LOCAL GOVERNMENT SECURITIES

To start your subscription to *Municipal Finance Journal*, call 1-800-457-9222.

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Editor's Note

With this issue we are pleased to announce that the *Municipal Finance Journal* has joined with the National Federation of Municipal Anaylsts (NFMA) to enhance the dialogue between key segments of the municipal market. The NFMA, a federation of regional and local societies, represents over 600 specialists in municipal securities. The Journal will allocate a column in each issue to be written by a representative of the NFMA. Jointly, we encourage members of the NFMA to submit the results of their research to the Journal for publication consideration: this arrangement is designed to provide readers of the Journal with research and bulletins from NFMA; it also enables municipal analysts to reach a targeted audience. The editorial decision of what to publish remains with the Editor, working in cooperation with the Journal's editorial advisors. The *Municipal Finance Journal* is interested in similar arrangements with other key segments of the market.

Another special feature in this issue is a collection of comments and reflections on the 15th anniversary of the *Disclosure Guidelines for State and Local Governments*. In December 1976, the organization then known as the Municipal Finance Officers Association released the original version of the Disclosure Guidelines, the result of two years of effort. The Disclosure Guidelines is one of the finest examples of how market participants, especially issuers, endeavor to make the municipal market function more efficiently without tightly controlled federal regulation. In recognition of the 15th anniversary, the Journal invited diverse members of the municipal market to contribute to this collection. We are honored that such a distinguished group of market participants and observers seized this opportunity, including S.E.C. Commissioner Richard Roberts, Dr. John Petersen (who, with Robert Doty, drafted the original Disclosure Guidelines and each of the subsequent revisions, and a cross section of perspectives from issuers, bond counsel, rating agencies and academicians.

Municipal securities increasingly are tied to some form of credit enhancement. Whether it is from a monoline bond insurer or a financial institution in the form of a letter of credit, credit enhancement is supposed to result in a lower cost of capital. Two timely articles address this topic. In the first article, Professor Amy v. Puelz addresses the decision by issuers to utilize both a call feature and bond insurance. As she points out, the net benefits from each choice must be evaluated in conjunction with the net benefits of the joint decision. Although a call feature is exercised to obtain lower rates, the cost savings can be offset by the presence of bond insurance. It is this relationship that Puelz models in a savings curve.

The second article addresses a form of credit enhancement termed *mortgage purchase structure*, whereby the credit enhancer (e.g., a bank) hedges project economic risk (e.g., mortgages) by selling them to a risk-taker familiar with the asset type. Bond counsel David J. Cholst defines and make the case for this financial technique to clear up what he believes is some misunderstanding in the industry. We look forward to receiving comments regarding the technique.

A topic of much interest in airport financing is the recently enacted passenger facility charge (PFC). Airport operators can levy the PFC head tax and borrow against its future income stream for airport expansion projects. Michael J. Bell, the recently appointed Director of Finance for the City of Atlanta, explains the new PFC, provides guidance on how to use it, and frames several unanswered questions.

The U.S. Supreme Court recently ruled that investors in municipal securities must bring securities fraud suits within three years of the event. This limits the time period in which bondholders may act. Richard Lehmann, President of the Bond Investors Association, points out that this time period is reduced even further since many bonds have several years of capitalized bond payments in the initial offering. As we go to press, Congress is considering steps to extend the time period for bondholders to seek relief.

Does public infrastructure spending have a positive effect on economic output and productivity? Not only has research flourished on this topic in recent years, but policy makers have seized upon the research to justify increased investment in public capital stock. In the "Infrastructure Issues" column, Professor Peggy Cuciti looks at the research and its critics.

Our "From the Trenches" column presents an interview with Kathleen Brown, State Treasurer of California, who addresses market issues, debt financing in California, and state budget policies. Treasurer Brown's approach to her job can have a significant influence on market practices, given the size of the California market and the state's influence on other states.

I want to recognize the contributions of the Editorial Board. This group along with other experts I have called upon from time to time, advise me on the quality of manuscripts and on editorial policy. These experts provide the anonymous peer review and commentary that ensure that the papers published meet the *Municipal Finance Journal's* publication standard.

We hope you enjoy this issue and will share with us your suggestions for upcoming issues.

—W. Bartley Hildreth

GOVERNMENT FINANCE OFFICERS ASSOCIATION

15-Year Anniversary of the
Disclosure Guidelines for State and Local Government Securities

RICHARD Y. ROBERTS*—Commissioner, U.S. Securities and Exchange Commission, Washington, D.C.

In 1933, Congress made a decision not to require offerings of municipal securities to comply with the same registration requirements that are applicable to corporate offerings. Nevertheless, municipal issuers and many of the professionals who participate in the offering process have similar, though perhaps not identical, responsibilities under the general anti-fraud provisions of the federal securities laws. While the provisions of the federal securities laws that impose such responsibilities do not distinguish between corporate and municipal offerings, for many years the practices in the two areas have followed separate tracks.

When disclosure questions arose in corporate offerings, guidance could be obtained from the Commission's disclosure items, releases, letters, and accounting bulletins, as well as from judicial decisions applying the anti-fraud provisions to specific facts. Moreover, regardless of whether or not a particular offering was subject to review by the Commission's staff, the participants in the transaction frequently brought to the offering a discipline cultured in the Commission's formal disclosure process. Even in exempt private offerings of corporate securities, securities lawyers adhered to early judicial decisions intimating that investors should be given information similar to that provided in registered offerings.

At the opposite end of the spectrum, prior to the mid-1970s, disclosure in municipal offerings frequently was a low priority. Perhaps because of their high quality, the disclosure provided to investors in traditional governmental issues often consisted of little more than

*The views expressed herein are those of Commissioner Roberts and do not necessarily represent the views of the Commission, other Commissioners, or the staff.

several pages setting forth the terms of the offering. With widely publicized problems in the municipal market in the early 1970s, and a growing volume of nontraditional tax-exempt financings, however, there was pressure to improve the disclosure provided to investors. The template for reform that was considered by the Congress in the mid-1970s was based on the system already working in the corporate market. Proposals to place more formal requirements on municipal offerings ultimately were not adopted, in part, because the industry already had recognized the need to improve disclosure practices.

The Government Finance Officers Association's (GFOA) *Disclosure Guidelines for State and Local Government Securities* (Disclosure Guidelines) can be credited with many of the significant improvements in municipal disclosure that have occurred since the mid-1970s. In the place of Commission disclosure items and pronouncements, the Disclosure Guidelines provides issuers and practitioners with reference points for resolving disclosure questions. Moreover, as transactions have become more complex and new issues have arisen, the GFOA has responded by updating the Disclosure Guidelines. Indeed, in some areas, such as the role of credit enhancement in the disclosure process, the guidelines have domonstrated a prescience that only now is becoming apparent.

On the 15th anniversary of its first publication, the Disclosure Guidelines has become widely accepted as a touchstone for municipal disclosure. Although the guidelines profess not to suggest legal standards for disclosure, whether they are followed in a particular transaction or not, in many cases they reflect sound industry practice that should not be casually dismissed. As importantly, the development of the guidelines and their acceptance by issuers, underwriters, and financial advisers demonstrate a growing sense of responsibility for disclosure which is similar to that found among participants in corporate offerings. The Disclosure Guidelines has moved the once-disparate disclosure practices of municipal and corporate practitioners toward converging tracks.

It is important to recognize, however, that the answers to some problems experienced in this industry may need to come from beyond the current guidelines. In many respects the guidelines are merely a starting point. For example, although they promote continuing disclosure, they do not address the fundamental need to begin coordinating the dissemination of relevant information to the secondary market. The guidelines cannot protect the public from unscrupulous securities salespersons, nor can they solve for drafters the difficult tasks of determining what information is material in a particular offering and of presenting that information in a fashion comprehensible to investors.

In the past 15 years, the Disclosure Guidelines has become an important tool for practitioners and a symbol of the ability of the municipal

industry to promote successful alternatives to federal regulation. The staying power of these guides will be tested repeatedly in the future. Whenever disclosure problems are found to exist in the municipal markets, the more familiar registration process for corporate issuers will be the standard against which the municipal industry's methods are compared. Moreover, if history is a guide, the problems demonstrated by a few issuers will need to be addressed by the industry as a whole. The continued ability of the industry to withstand federal controls on the municipal market will depend upon more than adequacy of information in the official statement. The industry must continue to meet the needs of investors and insist on sound disclosure practices at every level.

JOHN PETERSEN—Senior Director, Government Finance Research Center, Government Finance Officers Association, Washington, D.C.

On its 15th anniversary, it is fitting to recount how the *Disclosure Guidelines for State and Local Government Securities* began, how it developed, and what it has accomplished to date. The Disclosure Guidelines represents a unique chapter in self-regulation, as a large, diversified, and influential number of participants have both identified existing good practice and developed new practice to satisfy the evolving information needs of a dynamic and inventive marketplace.

Work on the Disclosure Guidelines began in 1974 as part of a larger research project on the subject of municipal credit sponsored by the National Science Foundation (NSF). Funded by the NSF, the Municipal Finance Officers Association (MFOA) undertook the project for which this author served as the project director. One phase of the study involved an analysis of the information needs of investors and of the purpose and content of municipal market offering documents (Official Statements). It immediately was evident that there was little uniformity among Official Statements. Most were very brief (nothing more than offering circulars in many cases) and frequently were prepared by the underwriter or financial advisor. They often did not contain financial statements, which themselves came in a dizzying array of formats and accounting bases, and were not always objective in discussing the virtues of the issuer. Simultaneously, initial legal research conducted by consultant Robert Doty indicated that the evolution of federal securities laws and potential applications of the anti-fraud provisions thereof had worrisome implications for municipal securities transactions.

Therefore, it appeared desirable to develop basic guidance about what information was, or should be, found in Official Statements. In its efforts, the MFOA research team was greatly assisted by the underwriting and legal communities, which were increasingly aware that some major disclosure problems (mainly revolving around the New York City crisis) were lurking in the wings.

The first draft of *Guidelines for Offerings of Securities by State and Local Governments*, produced by Robert Doty and this author, appeared in November 1975 and was given broad distribution by the MFOA. As fallout from the New York City crisis began to reverberate throughout the municipal securities market, disclosure became a hot topic, and issuers, underwriters, legal counsel, and investors searched for authoritative standards. Under the sponsorship of MFOA, a review committee was formed from a cross-section of the market and chaired by Donald Robinson. Colloquia were held around the country to examine the disclosure problem and to elicit comments on the draft. After a year's effort, the draft was adopted for publication by the GFOA Executive Board and released in December 1976. Concurrent with this review and adoption process, "real-time" research was undertaken to determine if the guidelines were having an impact on practices; happily, such improvement was observed and documented.

The publication of the Guidelines for Offerings was only the beginning. The following year, work on process questions of how and when disclosure information should be provided led to the publication of the *Procedural Statements*. Simultaneously, work commenced on revisions to the original Guidelines for Offerings and to a new set, *Current Information Guidelines*, covering annual and other current reporting of information on outstanding debt to the secondary market. Both the Procedural Statements and Current Reporting Guidelines went through extensive review, with the former being published in 1978 and the latter being incorporated into the same volume as the January 1979 edition of the Disclosure Guidelines.

Things remained quiet on the disclosure front until the mid-1980s, when the Washington Public Power Supply System (WPPSS) default and the flood of early calls on certain high-coupon bonds brought unfavorable attention to the tax-exempt market. In addition, the rapidly expanding variety of uses of proceeds, instrument types, and credit enhancements made it clear that the existing disclosure guidance was no longer sufficient. Work began on revisions to the guidelines in 1985. However, with the turmoil in the markets caused by the pending passage of the 1986 Tax Reform Act, a working draft did not appear until the summer of 1987. The January 1988 edition of the Disclosure Guidelines represented a significant expansion of disclosure items and procedures and integrated the constituent guidelines for new offerings, current reporting, and procedural statements.

It soon became clear, however, that greater involvement in the disclosure process by the Municipal Securities Rulemaking Board (MSRB) and the Securities and Exchange Commission (SEC) was on the horizon. No sooner were the 1988 Disclosure Guidelines out than the SEC published for comment proposed Rule 15c2-12, which set forth extensive requirements concerning the disclosure activities of underwriters and, by implication, issuers as well. The extended consideration of Rule 15c2-12 and its final adoption in June 1989 brought the subject of municipal disclosure to the forefront and made several facts clear:

1. Providing disclosure guidance only for governmental securities was not politically viable; the term *municipal* was applied to all tax-exempts; and comprehensive guidance required that conduit securities (where the underlying obligor was a nongovernmental party) be specifically treated.
2. The new SEC rule and supportive rules fashioned by the MSRB were developing a procedural and informational framework within which the disclosure process would have to operate.
3. By their deference to the guidelines regarding the substance of disclosure documents, the SEC and MSRB had further bolstered the authority and importance of the guidelines.
4. The expansion of the market had led to the development of specific sectors and organization interests (e.g., trustees, specialized issuing authorities, information providers, credit analysts, bond lawyers) that had their own needs and agendas regarding the disclosure process and the content of disclosure documents. For the guidelines to continue to be comprehensive and reliable, their scope would have to be expanded; they would need to be aligned to the newly adopted regulatory requirements; and greater sectoral detail would have to be keyed into their basic structure.

Work on the 1991 edition of the Disclosure Guidelines began in the summer of 1989, immediately after the adoption of rule 15c2-12. The 16-person Disclosure Task Force, headed up by Jeffrey Green and supported by a 14-person Advisory Council, considered an extensive list of revisions and produced an Exposure Draft in July of 1990. After circulating the draft for comment, the latest edition was released in January 1991.

The current edition of the Disclosure Guidelines is more comprehensive and assertive than previous incarnations. After 15 years of experience, evolution, and demonstrated authority, the guidelines are the standard by which disclosure documents and practices are judged.

The success of the guidelines is wedded to their vitality and currency. They must always be in a process of revision to remain authoritative and comprehensive. Even now, daily experience is testing the latest edition, and the efforts of allied interest groups such as the Corporate Trust Committee of the American Bankers Association, the National Federation of Municipal Analysts, and the Association of Local Housing Finance Agencies will refine the guidelines' basic body of instructions.

To be effective, the guidelines will have to tackle tough and controversial subjects from time to time. This means that at the risk of hostility and rejection in some quarters, they must always work to improve practices that are defective or incomplete. That being said, the Disclosure Guidelines is a market-wide, pragmatic product and, as such, necessarily reflects a balancing of perspectives on how a great diversity of investor needs can most effectively be met in a dynamic municipal security marketplace.

The observance of future birthdays for the Disclosure Guidelines will depend on maintaining a spirit of concern and circumspection by the people who use and care about the guidelines. In that spirit, we favor not so much a pat on the back for the many who have contributed to them, but rather a shove forward to those who will keep the guidelines relevant and in good repair.

CHARLES E. CAREY—Partner, Mudge Rose Guthrie Alexander & Ferdon, New York.

During the past 12 years, I have been involved as both bond and underwriter's counsel on an extensive number of conduit financings, primarily in the multi-family housing and health care facilities areas. Almost all of these financings have involved some form of credit enhancement, from private mortgage and bond insurance to federal rent subsidy and mortgage insurance programs. In these areas I have found that while the GFOA's Disclosure Guidelines has not in and of itself brought about changes in the disclosure practices of the larger state agency conduit issuers, it has been and continues to be instrumental in addressing changes in the market demands and federal regulations.

In the area of health care facilities financings, the Disclosure Guidelines has been helpful in establishing standards for disclosure on the part of the health care providers who are the beneficiaries of the financings. Notwithstanding the publication of SEC Rule 15c2-12 and the SEC Releases related to the Rule, health care providers continue to argue that so long as there is credit enhancement, there is no need for them to provide in-depth disclosure about their credit standing and that of the facilities to be financed. Investors look to disclosure to provide information regarding not only the security for debt, but also the ability of the beneficiary of the financing to maintain and operate the facilities throughout the term of the debt. The Disclosure Guidelines provides a framework within which such disclosure can be structured and highlights the need for such disclosure, notwithstanding the presence of credit enhancement.

The GFOA's Disclosure Guidelines also has provided guidance about disclosure for private credit enhancers. Governmental issuers can no longer assume that a rating service determination that a debt will fall in the highest rating categories will relieve them of the obligation to provide adequate information about the ability of the credit enhancer to meet its debt obligation. The ever increasing concerns of investors regarding the risk of early redemption also are addressed in the Disclosure Guidelines' recommendations that the rights of the credit enhancer to control remedies should be fully disclosed.

It is my belief that the Disclosure Guidelines will play an increasingly important role in the financing of multi-family housing. In the past, disclosure in this area centered around either independent demand studies or the mortgage underwriting experience of the governmental issuer and its ability to select quality developments for financing. There was little, if any, financial history that could be disclosed about the proposed owners of the development.

With the increasing demand for continuing disclosure, the issuers of multi-family housing bonds will need to obtain ongoing information concerning the development. While such issuers understand the desire of the market for continuing disclosure and the importance of maintaining market confidence, many developers are limited partnerships created solely for the purpose of owning and operating one development. In the future, issuers of multi-family housing bonds will be examining the disclosure guidelines to determine what contractual obligations to incorporate in loan documents to require developers to provide updated information.

It is significant to view the current version of the Disclosure Guidelines in the context of a 15-year process of publishing disclosure guidance for the municipal securities market. GFOA has taken a leadership role in the disclosure arena that has proved valuable to the investors in and issuers of municipal securities. The continuation of this process of evolution in the Disclosure Guidelines is essential to the operation of an efficient municipal securities market.

CLAIRE COHEN—Executive Managing Director, Fitch Investors Service, Inc., New York.

Fifteen years after the publication of *Disclosure Guidelines for State and Local Government Securities*, acceptance appears to be complete and in fact has spurred the development of similar guidelines tailored to the needs of the secondary market. Perhaps the most significant impact of the Disclosure Guidelines is its general acceptance. Information prepared by borrowers for use in the capital markets is now standard in content, paving the way for greater comparability among similar credits.

At the time of its publication, many borrowers despaired of gathering all the requested information within one format. The discipline gained by the process of creating the Disclosure Guidelines provides a good foundation for collecting information in the future. In the present, the availability of comprehensive information under one cover has made the municipal market more efficient.

In an analytical sense, one benefit from full disclosure has been the recognition of all debt commitments entered into, not merely those that carry the full faith and credit of the borrower. Prior to full disclosure, offering circulars tended to cover only the type of security currently being offered. For a general obligation, the circular was unlikely to mention such commitments as bonds secured by a sales tax or those issued by another agency and payable perhaps from general fund appropriations. The listing of all such commitments allows a more complete picture of all debt which must be borne by the same taxpayers. A secondary benefit has also resulted. Now, when nongeneral obligation securities are issued, their recognition by the parent government, which is in reality the payor, has improved their credit perception in the marketplace. In addition, disclosure has been a major factor in the recognition of general lease commitments, a process which is still evolving.

The updating aspect of the Disclosure Guidelines is also of major importance as it allows the incorporation of new developments, such as the recently added section on conduit financing.

As a constant user of government information, I feel that acceptance and use of the Disclosure Guidelines has produced a common understanding of the information necessary to assess government credit. By creating a discipline in this presentation, credit in the municipal market has been strengthened. While a rating agency may have general access to the information contained within a disclosure statement, the inclusion of all relevant information within one document has increased efficiency.

RICHARD B. DIXON—Chief Administrative Officer, County of Los Angeles, and President, Government Finance Officers Association.

Among the many accomplishments of the Government Finance Officers Association over the years, no contribution ranks higher than the formulation, sponsorship, and promotion of the *Disclosure Guidelines for State and Local Government Securities*. When the Disclosure Guidleines were introduced in 1976 by the GFOA's predecessor, the Municipal Finance Officers Association, the fiscal conditions for state and local governments were very much as they are today. Governments were in the grip of a recession, and several major borrowers (especially New York City and others located in the Northeast) faced seemingly intractable budget-balancing problems. The introduction of the Disclosure Guidelines greatly improved disclosure documents and practices and thereby helped to improve the quality and quantity of information flowing to the investing public. The responsiveness of governments working within the framework set forth in the Disclosure Guidelines helped to assuage fears that state and local governments were on the brink of collapse.

The past 15 years have witnessed changes in the nature of the capital markets and in disclosure needs and processes. The focus of interest is no longer solely on the official statement. Continuing reporting on outstanding bonds, which was incorporated into the guidelines in the late 1970s, is of much greater interest these days than when the guidance was formulated. Likewise, the nature of the market instruments and of the borrowers has expanded in both scope and complexity. In addition, market regulators—the Municipal Rulemaking Board and the Securities and Exchange Commission—have assumed a more active and important role. These and other changes have been reflected in the Disclosure Guidelines. For example, the 1991 edition expanded the compass of guidance to include conduit securities and to provide for credit enhancements.

As a result of the expanded scope of state and local finance, the Disclosure Guidelines, which initially consisted of a few pages of general principles, now extends to 135 pages of guidance with several appendices. In my opinion, it is remarkable that a $200 billion annual new-issue market with approximately 8,000 new issues a year and a secondary market at least twice that size can look to a core of sound and comprehensive practice compressed into a relatively brief document.

At the age of 15 years, the Disclosure Guidelines has much to be proud of in terms of its impact and substance. But it is equally important that the guidelines, and the process by which they are kept refreshed and relevant, represent a rallying point for other sectors of the municipal bond market. In particular, I see the National Federation of Municipal Analysts, the Corporate Trust Division of the American Bankers Association, the Public Securities Association, the National Council of State Housing Agencies, and the Association of Local Housing Finance Agencies actively engaged in improving disclosure. These groups, and others, provide detailed guidance to individual market sectors and investors on specific applications of the Disclosure Guidelines.

Certainly, the guidelines assist us in meeting one of our key fiscal obligations to investors in public securities—providing full and complete disclosure of all pertinent information. It should be pointed out, however, that there are inherent rewards in meeting this public trust: full disclosure usually results in lower interest costs for public agencies and opportunity for more market investors to participate. The result is a more vibrant and energetic marketplace.

There is another aspect of the Disclosure Guidelines and the municipal disclosure process that is very important to me as the Chief Administrative Officer of a major jurisdiction, Los Angeles County. The disclosure process and documents provide an excellent opportunity for management to set forth, in a realistic, unvarnished way, the challenges and responses that governments face. There is no place in disclosure documents for puffery or boosterism. But the official statements and other disclosure documents set forth in the Disclosure Guidelines are not lifeless collections of legalisms. They demand objectivity, yes; but they also provide a vehicle for looking ahead and, thereby, an opportunity for governments to demonstrate an understanding of problems, give an honest accounting of the way things have been done, and describe how management plans to contend with the future. Investors care about the longer run and judge a government on its ability to decipher where it is heading and to plan accordingly. It is this emphasis on the future that gives the disclosure process its vitality. It makes preparing an annual information report a challenge and produces interesting reading.

The discipline of disclosure embodied in the Disclosure Guidelines is demanding but healthy. In essence, the guidelines provide a framework for asking those questions that transcend the bond market and go to the heart of what government is about—providing services to citizens honestly and efficiently.

ROBERT FIPPINGER—Partner, Orrick, Herrington & Sutcliffe, New York, New York.

The impact of the Disclosure Guidelines cannot be fully appreciated without recognizing the inadequate disclosure context in which the

guidelines first appeared in 1976. Before 1975, issuers frequently prepared offering circulars of a few pages that included key terms of an issue, but these circulars were in no respect comparable to full disclosure of material information. Public authorities were developing official statements in the early 1970s modeled on registered offerings of corporate issuers, but the practice had not deeply penetrated the municipal markets, particularly the advertised offerings that were premised on a notice of sale.

In 1975, Congress amended the Securities Exchange Act of 1934[1] to provide that the critical defined term *person* in Section 3(a)(9) would thereafter include specified units of government. The anti-fraud provisions of the 1934 Act and Commission rules thereafter encompassed states and their political subdivisions as well as underwriters of municipal securities that had been covered before 1975. Of particular importance was Rule 10b-5, which prohibits any "person" in the purchase or sale of any security from making a misleading statement or omitting material information.[2]

The 1975 Amendments were followed by a mid-1976 law review article written by Robert Doty and John Petersen that provided the first systematic treatment of the application of the federal securities laws to public finance.[3] Suddenly, the industry was alert to the full implications of the anti-fraud rules for disclosure. When the revised guidelines were released in December 1976, they provided a lifeline for the substantial segment of the industry that had not been following the disclosure pattern of the public authorities and similar issuers.

After 1976, issuers and underwriters could use the guidelines, as well as existing Official Statements typically prepared in negotiated offerings, as primary drafting precedents. Of the two sources, Official Statements tended to be the starting point for working-group drafting sessions, while the guidelines served a diligence function of providing suggestions for inclusion. Although reference to the guidelines prevented omissions of significant information, many bankers and lawyers found it necessary to draft from prior Official Statements.

By the late 1970s, segments of public finance were developing their own precedents. Airport issues had a distinctive format that differed from housing issues or power issues. Likewise, documents for a retail market were often formatted differently from documents for institutional investors. In the laboratory of experience, it was becoming apparent that clarity of presentation might be better achieved by a degree of diversity in disclosure than by a single required style.

The practical experience of the public finance working groups was a reflection of a facet of theoretical writing in financial theory, including the efficient market hypothesis and portfolio theory.[4] This literature emphasized the availability of information from diverse sources and resulted in outspoken criticisms of the mandatory registration system.

While sometimes overlooking fraud and manipulation in its emphasis on disclosure, the critical pieces have had their influence. The Commission has recognized diverse methods of achieving the functional equivalent of mandatory registration[5] as well as a diversity in presentation within the registration system.[6]

In view of the trend toward more diversity in presentation during the 1980s, it was significant that in 1989 the Public Securities Association (PSA) released a statement recommending more uniformity in formatting Official Statements.[7] The PSA position should be viewed in the context of the qualitative difference between the standardization of public finance Official Statements and corporate prospectuses subject to the registration rules. Furthermore, the attack in the theoretical literature on a costly registration system is premised on efficient markets in which the marginal level of new information derived by the analyst from the registration statement is relatively low.

In the less efficient public finance markets, the Official Statement is of paramount importance. Therefore, the order of presentation, as well as the substance of information, is of increased significance to the analyst. The SEC can afford to relax certain rules of corporate disclosure since the analyst probably has the information from more than one source. In public finance, however, an Official Statement may often be the only source of material information. Separate forms of disclosure documents for each segment industry in public finance may achieve adequacy of disclosure while producing an element of market inefficiency in the public finance industry as a whole.

The PSA's recommendations on formatting were limited to the cover page and the introduction or summary statement. The PSA was looking forward to the development of the repository system, particularly in the event of electronic access. The investor accessing a document by computer to determine, for example, the sources of security for an issue will find a summary that provides introductory information and references to parts of the document containing more detailed information. In this respect, standardization improves the efficiency of the information flow to the marketplace.

The Disclosure Guidelines includes the PSA recommendations, but also provides highly detailed recommendations for the order of presentation and the substance of disclosure throughout the Official Statement. Given the propensity of public finance professionals to draft on the basis of existing Official Statements, the lengthy detail of the Disclosure Guidelines is often considered overly cumbersome. As a checklist for information expected by the analysts, many find the outline form of the *Disclosure Handbook for Municipal Securities* (Handbook), prepared by the National Federation of Municipal

Analysts,[8] more useful, particlularly since it is organized by industry segments, in the manner in which underwriters tend to organize their documents.

The professionals who are active in the issuance of housing bonds have developed their own criteria for adequate disclosure, distinct from the criteria that have evolved in the disclosure for airport bonds. When the underwriter of a housing issue refers to the housing portion of the Handbook, and finds the entry "status of pool insurance," he or she is already familiar with the diligence procedures and disclosure for that item. The same is true for the underwriters of an airport issue who turn to the airport section of the Handbook and read the entry "Passenger profile—originating, connecting, destination." The Handbook is an easier reference source than the Disclosure Guidelines with its long paragraphs that attempt to cover all types of issuers. However, the Disclosure Guidelines covers a substantially larger amount of the disclosure process and so may require considerable explanation.

If it is accepted that a goal in the 1990s is the development of an efficient market in the flow of information about municipal securities and their issuers, then the combined effect of the PSA recommendations, the Handbook, and the Disclosure Guidelines is as significant as the original effort in 1976 to promote adequate disclosure. Issuers and investors should study the guidelines with a sense of the way in which standardization facilitates efficiency. At the same time, it should be recognized that individualized presentation often enhances rather than detracts from informational efficiency.

In 1976 the issue was adequate disclosure. In 1991, the effort is to create an efficient market—a more formidable task, to say the least. In 1976, the GFOA (MFOA) stood virtually alone in fighting the inertia of the past. In the 1990s, the momentum is with the GFOA. And with the assistance of various public and private organizations, as well as market forces, there will be increasing market efficiency in public finance.

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1. Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 97 (June 4, 1975).

2. 17 CFR § 240.10b-5 (1991). The definitions of the 1934 Act are incorporated into Commission rules by the interpretative Rule -1(b), 17 CFR § 240.-1(b) (1991).

3. Doty and Petersen, "The Federal Securities Laws and Transactions in Municipal Securities," 71 *Northwestern L Rev* 283 (1976).

4. See, e.g., J. Seligman, The SEC and the Future of Finance, 195 (1985).

5. This trend is particularly evident in efforts to allow the formation of capital outside the United States without the necessity of registration. See, e.g., Bloomenthal, "The SEC and Internationalization of Capital Markets: Herein of Regulations S and Rule 144A," 18 *Den J Int'l L & Pol'y* 82 (1989).

6. This may be illustrated by the evolution since 1968 in the Commission's requirements for management discussion and analysis of financial condition and results of operation (MD&A). The MD&A section of disclosure allows a company to discuss the dynamics of its business based on financial variables. As reflected in its 1989 interpretative release, the Commission's rules are intentionally general to reflect its increasing belief that a more flexible approach will result in more meaningful disclosure. Release No. 33-6835 (May 24, 1989); see also, Sonsini and Petkanics "Management's Discussion and Analysis: The SEC Gives Interpretative Guidance" Insights, Vol 3, No 10 (Oct 1989).

7. Public Securities Assn., "Recommendations for a Consistent Presentation of Basic Bond Provisions in Official Statements" (Dec 1989).

8. National Federation of Municipal Analysts, *Disclosure* Handbook for Municipal Securities (Jan 1990).

JEFFREY S. GREEN—Deputy General Counsel, The Port Authority of New York and New Jersey.

The last several years have been marked by increased activity by participants in the municipal securities industry regarding roles and responsibilities in the disclosure process, the content of disclosure, and control of disclosure documents. None of this would be occurring, absent direct federal regulation and mandates, without the 1976 publication of the Disclosure Guidelines, its subsequent revisions, and most important, its widespread acceptance as an industry standard.

The January 1991 edition of the Disclosure Guidelines includes a number of significant additions and represents an expansion of the types of bond issues covered by the guidelines. For the first time, they make recommendations with respect to conduit financings for private and not-for-profit entities. The expansion of their recommendations provides specific recognition of the fact that disclosure is "an ongoing and dynamic process." The guidelines are a continuing restatement of the fact that voluntary self-regulation is working in the municipal market.

Since their first publication, they have provided consistent guidance regarding the type of information that should be provided to investors in connection with the sale of state and local government securities. At the same time, the guidelines have never created disclosure requirements or a legal obligation to provide any or all items of recommended information.

The Disclosure Guidelines is intended to centralize in one location sound business practices with respect to disclosure. It provides recommendations concerning appropriate disclosure for preliminary and final official statements, as well as for certain post-issuance representations or assurances. In addition, it reaffirms recommendations for timely disclosure of information on a continuing basis, recommends

the prompt release of information describing events that have a major effect on an issuer's finances, and provides assistance regarding the process of supplying information to the market, consistent with applicable rules of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board and developing practices.

The Disclosure Guidelines has always recognized that there is no single source of information to be consulted. It is, therefore, always helpful to consider the guidelines' recommendations in light of remarks made by the Commissioner of the Securities and Exchange Commission, Edward H. Fleischman, on February 7, 1991, to the National Association of Bond Lawyers' Washington Seminar, that:

> . . . there is no Rosetta Stone—that neither the revised set of GFOA Guidelines nor any precedential official statement ever provides exactly the pattern for the disclosure document you are working on today. It remains *your* professional judgment, *your* professional responsibility, that finally determines how best today's disclosure should be made—and whether today's knowledge is sufficient to make that determination. The exercise of that judgment, the discharge of that reponsibility, is of course affected by many of the same factors that the SEC has described as affecting municipal securities underwriters' responsibilities.

As commissioner Fleischman noted, the guidelines are important but cannot be considered the sole determinant of disclosure practices. They are a tool, and tools are only helpful if they are used. Voluntary self-regulation can only work when the guidelines' recommendations, combined with independent professional judgment, create widely accepted standards of conduct.

For disclosure documents, the guidelines recommend the inclusion of information that has been identified as important through a repeated thorough review over a period of more than 15 years. They also recognize that individual judgments are made when particular disclosure documents are prepared concerning what is most relevant for investors. Therefore, those preparing disclosure documents both on original issue and for secondary market purposes should have close familiarity with the substance of the guidelines—especially since both the Municipal Securities Rulemaking Board and the Securities and Exchange Commission have repeatedly declined to make recommendations about the substance of disclosure by state and local governments. In fact, both have repeatedly recognized the importance of the guidelines in establishing a framework for disclosure by state and local governmental issuers.

Primarily, the guidelines recommend disclosing information that an investor might consider relevant to making an informed investment decision. They, therefore, recognize that sometimes information not recommended in the guidelines may be relevant and suggest that, in those cases, that information should be provided. Further, the guidelines specifically recognize that information they recommend may, at times, be unnecessary or irrelevant. The guidelines carefully point out that the goal of disclosure documents is to provide a complete, accurate, and objective description of all relevant factors to enable a reasonable investor to make an informed investment decision.

It is fair to say that if the Disclosure Guidelines had not been developed, had not been followed, and most important, had not been modified to take into account continuing developments in the market, the municipal market would be faced with direct federal regulation or major disclosure problems. It is equally fair to note that if the current guidelines—particularly as they apply to bonds not previously covered such as conduit financings—do not become industry standards, federal regulation may yet occur.

JOHN GUNYOU—Finance Commissioner, State of Minnesota.

With publication of the latest update of the Disclosure Guidelines, GFOA has continued its long tradition of leadership in promoting sound public debt management practices. After 15 years, the guidelines still encourage us to "do the right thing."

The Disclosure Guidelines represents a significant touchstone in our self-regulated, but increasingly uncertain, market. This "living document" has now undergone its most recent transformation. While many useful changes were incorporated, most notably standardization and simplification of official statement formats, the most significant modification focused on the need to improve secondary market disclosure. Voluntary implementation of the revised Disclosure Guidelines should go a long way toward preserving investor confidence in our financial markets.

In the past, I have been crass enough to suggest that the tax-exempt bond market really only consists of two players: issuers and investors. Everyone else is a middleman. However, it is these middlemen—the underwriters, bankers, trustees, bond counsel, and financial advisors—who largely regulate and dictate our market practices.

The Disclosure Guidelines calls for issuers to regain control of their market by assuming their responsibilities to investors. Adequate secondary market disclosure, especially for private activity bonds, is dependent on the involvement of issuers to ensure that private parties, to whom they have lent our tax-exempt name, continue to provide information on their financial condition to the market. Issuers have

both the right and obligation to contractually require such actions from the beneficiaries of their tax-exempt debt.

Our greatest challenges will come from the middlemen. Although many responsible people in the industry have enthusiastically endorsed the new Disclosure Guidelines, issuers have already heard some underwriters and trustees warn against changing their past practices because of possible increased costs and questionable market acceptance. Some bond counsel even have advised issuers to ignore the new guidelines by raising the false specter of possible increased liability, suggesting that requiring ongoing disclosure by industrial development bond recipients on behalf of investors is "none of their business," and arguing that the "system is not broken."

However, when potential investors in the secondary market and municipal bond analysts are refused access to annual financial statements of publicly financed health care facilities, the system is clearly broken. When SEC investigators of the Washington Public Power Supply System default are told by the multitude of underwriters and attorneys who reaped millions of dollars from the transaction that they share no responsibility for the accuracy of initial and ongoing disclosure documents, the system is clearly broken. When bond insurers maintain that they should not be required to provide ongoing disclosure because they do not "replace" credit, but merely "enhance" it, regardless of the fact that the issue's bond rating rests on the strength of the credit institution, the system is clearly broken.

The reality is this: in order for our tax-exempt market to retain its strength and avoid further federal regulation, issuers must accept responsibility for ensuring that adequate secondary market disclosure takes place, both for our own "real" issues and for those that carry our names. Many responsible middlemen have embraced the new Disclosure Guidelines and are willing to help issuers implement the changes. It is only left for us to do the right thing.

EARL K. LITTRELL AND FRED THOMPSON—Earl K. Littrell is Professor of Accounting and Information Sciences, and Fred Thompson is Grace and Elmer Goudy Professor of Public Management & Policy, Atkinson Graduate School of Management, Willamette University, Salem, OR.

What do the participants in the municipal market want, and does financial disclosure help them get it? It is fairly easy to say what debt-issuing jurisdictions want. They want cash as cheaply as possible. The other parties to the transaction—underwriters, broker-dealers, bond counsels, credit raters, insurers, and investors—want to protect themselves against nasty surprises from the consequences of moral hazard and adverse selection. Broker-dealers and underwriters also want to protect themselves from legal liability in case of default on the part of the issuing jurisdiction. Investors want high, risk-free returns—something the market can't provide, but which the courts might.

Does financial disclosure help any of these parties achieve their goals? We know of no rigorous evidence that disclosure helps issuers gain access to capital markets or obtain cheaper credit. Furthermore, municipal disclosure will result in cheaper credit only if it provides the market with information that is both critical and fresh. Critical information permits some investors to calibrate the risk-return characteristics of their portfolios more accurately, thereby increasing demand for debt issued by disclosing municipalities. Fresh information is data that are not already available from other sources such as rating services or bond insurance companies. We have no reason to believe that disclosure provides information that is either critical or fresh.

The point at issue here is the kind of disclosure. Investors want to know the probability of default, and perhaps also the portion of this probability that represents systematic, undiversifiable risk. Even full and complete disclosure of information about the financial condition of the issuing jurisdiction will not significantly increase the accuracy of the default estimate. Municipalities do not default on their obligations bacause of poor finanical management. They default because they stop growing, because the local economy takes an unexpected nose dive, or because of an act of God. Municipal officials are no more able than anyone else to predict these events, and certainly not more so than the market. The broad array of measures employed by the rating services, for example, permits far more accurate estimates of these probabilities than financial measures alone.

Of course, a number of issuers voluntarily comply with the Disclosure Guidelines. In Oregon, for example, virtually all issuers do so. We presume that they would not be willing to bear the substantial costs of complying[1] if they did not benefit somehow. Here analogy can be made to the FASB's Statement of Financial Accounting Standard No. 33, which required large corporations to show the effects of inflation on their financial condition. After studies that showed this costly information was apparently neither critical nor fresh, FASB made compliance with SFAS No. 33 voluntary (SFAS No. 89, 1986). Consequently, few if any corporations now provide this information.[2]

Why do issuers voluntarily comply with the Disclosure Guidelines? Clearly, adverse selection, where only bad risks try to borrow, is not a problem. Otherwise, rating agencies and bond insurers would be more enthusiastic about the guidelines than they are. Because compliance with disclosure guidelines increases the potential legal liability of government officials and administrative officers, disclosure may somewhat

reduce the problem of moral hazard, where borrowers make excessively risky investments. But it is hard to see why this would be a reason for government officials, such as finance officers, to support disclosure.

Perhaps they comply in order to insulate the people they work with—the underwriters, the broker-dealers, and the bond counsels—from legal liability. The issuer's compliance with financial disclosure standards reduces the potential exposure of underwriters, broker-dealers, and bond counsels by shifting liability back to the investor. Local officials in Oregon tell us they comply with financial disclosure standards because they have been advised to do so by their bond counsels and financial advisors.

Or, perhaps, government officials comply because of professional pride. Richard Armstrong, Director of Finance for the City of Salem, Oregon, told us that he complies because he thinks it is the right thing to do. Perhaps voluntary compliance with the disclosure standards is in part a way of signaling professional sophistication and competence. If so, we can expect compliance with the Disclosure Guidelines to be a short-lived fad. Once everyone has climbed aboard the bandwagon, compliance will no longer signify anything in particular. In that case we would expect the guidelines to slip into the same oblivion where SFAS 33, ZBB, and PPBS have been laid to rest.

Actually, the best reason we can see for complying with the Disclosure Guidelines is that voluntary self-regulation may shield municipal issuers from regulation under the Securities Act of 1933. This act imposes extremely onerous and comprehensive registration requirements on all securities sold in primary markets. Furthermore, it makes all signers and preparers jointly and severely liable for all damages to investors due to the presence of material omissions or misrepresentations found in the registrations statement. We would happily comply with the Disclosure Guidelines to avoid the costs of registration under the Securities Act and the potential legal liability such registration entails. We would be even happier if compliance gained some relief from the financial reporting requirements and fiscal constraints imposed by the states upon local jurisdictions.

1. We don't know how high these costs are, but information is often costly, and perfect information is almost always prohibitively so. For example, when the SEC required large corporations to disclose the cost of replacing assets, Texas Instruments and Koppers reported compliance costs of $400,000 and $100,000 respectively (*WSJ*, May 23, 1977; pp. 1, 34).

2. The 1986 edition of *Accounting Trends and Techniques* (New York: AICPA) reported that 475 of 600 firms surveyed provided SFAS 33 information in 1985, the last year these data were mandatory. The following year the number voluntarily complying dropped to 98. In subsequent years no data were reported. According to Donald E. Kieso and Jerry J. Weygandt (*Intermediate Accounting*, 6th ed., New York: John Wiley & Sons, 1989; p. 1313), "A recent search of over 2000 companies found less than 10 companies providing voluntary changing price information."

PAUL S. MACO—Partner, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, Boston, and Director, National Association of Bond Lawyers.

As most participants in the municipal bond marketplace know, municipal bonds, though subject to anti-fraud provisions, are exempt from the registration and reporting requirements of the Federal Securities Laws. Consequently, there is no federal regulation of the content or format of municipal issuer disclosure in the initial or secondary markets. The first comprehensive effort at filling this void was undertaken in 1976 and continues with the 1991 publication of the Disclosure Guidelines.

The GFOA's efforts were both timely and skillful. The efforts were timely in the sense that the release of the Disclosure Guidelines coincided with action in Congress to amend the Federal Securities Laws and delve into regulation of the municipal securities markets. (The measures resulted in the creation of the Municipal Securities Rulemaking Board (MSRB) and the enactment of the so-called Tower Amendment prohibiting the SEC and the MSRB from requiring the filing of any information prior to the initial sale of the municipal securities.) The effort required a great deal of skill because any proposal to fill the void, in order to be successful, must be endowed with the aura of legitimacy. Unlike the rules and regulations of the Securities Exchange Commission, the GFOA guidelines do not carry the force of law. Perhaps this is for the best, for, paraphrasing SEC Commissioner Fleischman, the final determination of the adequacy of disclosure rests upon the judgment of the borrowers and their professional advisers and not upon rigid adherence to formulaic rules. The matter filling the void, then, must properly guide the market to practices that advance the goal of accurate disclosure through methods acceptable to the marketplace. Legitimacy is essential if voluntary efforts are to be widely accepted by the municipal marketplace as benchmarks for behavior.

The GFOA guidelines derive their legitimacy from both the composition of the participants drafting the guidelines and the guidelines' overall approach to municipal disclosure practices. From the beginning, individuals reflecting the major segments of the municipal bond market participated in drafting the Disclosure Guidelines. Successive editions were prepared by expanded groups, as additional segments of the marketplace articulated an interest in disclosure and pursued efforts to enhance its quality. For example, the National Federation of Municipal Analysts, National Council of State Housing Agencies, and National Council of Health Care Facilities Financing Authorities are but a few of the industry groups that have recently initiated disclosure-

related projects of their own and participated in the drafting of the January 1991 edition of the Disclosure Guidelines. Each successive drafting group has chosen a responsible manner of implementing the guidelines, always through recommending appropriate subject matter and disclosure methods without attempting to dictate unbending rules.

Over the past 15 years the Disclosure Guidelines has reponsibly and effectively led municipal issuers in providing further information to investors. Each successive edition has managed to recommend information meeting investor needs without unduly burdening municipal issuers. The Disclosure Guidelines has led the municipal marketplace through periods of development and concern. As previously noted, the initial edition was timely, coinciding with congressional steps to regulate municipal securities dealers and immediately preceding a Securities and Exchange Commission "Staff Report on Transactions and Securities of the City of New York," released in August 1987. This report sharply criticized the disclosure efforts of the city and of other participants in the city's borrowings. It is worth noting that it was not then uncommon for municipalities to provide no information to prospective investors other than a brief notice of sale in connection with the sale of their securities. Since that time, comprehensive official statements have become routine in connection with the initial offering of municipal securities. Indeed, a Public Securities Association survey conducted in 1988 revealed that 94 percent of respondents to the survey regarded the quality of disclosure in municipal offerings as satisfactory to excellent.

Since the initial edition of the Disclosure Guidelines, the municipal marketplace has witnessed the development of put bonds, variable rate demand notes, credit enhancement through bank-issued letters of credit and municipal bond insurance, the proliferation of a variety of conduit borrowers, from industrial enterprises to nursing homes, educational institutions, and museums, and has experienced varying periods of economic crises as well. Its flexibility, combined with a pattern of periodic revision, has maintained the Disclosure Guidelines as a useful disclosure tool throughout the market's evolution.

Perhaps the most significant event of those 15 years is the default of the Washington Public Power Supply System on $2.25 billion of debt. This default triggered a second SEC staff investigation into the municipal bond market, which upon conclusion recommended the adoption of Rule 15c2-12. The rule regulates broker-dealer conduct with ramifications for the issuing community and is accompanied by releases setting forth the SEC's view on municipal disclosure. The most recent edition of the Disclosure Guidelines again places it in a leadership role. The new edition recommends procedures to be followed by issuers to assist underwriters in their obligations under the federal securities laws, including Rule 15c2-12, and further acknowledges the role of the issuer in preparing disclosure documentation for the marketplace by noting the SEC's reminder, contained in the releases adopting Rule 15c2-12, that "because they are ultimately liable for the content of their disclosure, issuers should insist that any persons retained to assist in the preparation of their disclosure documents have a professional understanding of the disclosure requirements under the federal securities laws."

The latest edition has been expanded to address proper practices in the areas of conduit offerings and credit-enhanced offerings and of continuing disclosure. While recent months have witnessed difficulties with some conduit and credit-enhanced issues, the debate surrounding continuing disclosure is now entering a most ciritical stage. A variety of interests compete with each other and seek a proper sorting out. The trading community understandably demands current information on issues that it wishes to price and trade. The holders of municipal bonds argue their entitlement to information that periodically updates them on the quality of their investment. The issuers may rightfully request a system of disclosure that enables them to communicate effectively with their purchasers without assuming undue economic burdens of reporting. In short, a system of periodic disclosure that is appropriate to the frequency and volume with which issuers borrow must be matched to the needs of current and potential investors for up-to-date information. The most recent edition of the Disclosure Guidelines offers continuing recommendations that issuers of municipal bonds may find appropriate to their circumstances. The next few years will tell the extent to which marketplace forces insist upon, and perhaps even reward, issuers who follow the continuing recommendations of the Disclosure Guidelines.

Call Provisions and the Cost Effectiveness of Bond Insurance

AMY V. PUELZ*

The issuer of tax-exempt debt faces many decisions when structuring a bond issue. Two major decisions are whether to (1) include call provisions and/or (2) purchase bond insurance. If the benefits of the call provision and the insurance purchase decision are evaluated independently, then the issuer is overvaluing the net benefit of the joint decision. This is due to a particular intertemporal feature of municipal bond insurance that affects call provisions: the *a priori* interest cost savings attributed to the purchase of insurance is forfeited when the bonds are called prior to maturity.[1] Therefore, the joint evaluation of the cost effectiveness of including call provisions and buying municipal bond insurance is important for accurately determining the plausibility of including either call provisions or insurance protection as components in a bond issue's structure.[2]

Such a decision paradigm is considered in this paper. A technique is offered to quantify the expected forfeited interest cost savings on an insured, callable bond. The cost effectiveness of jointly evaluating the decisions is measured by comparing the net benefit of the independent decisions with the net benefit of the joint decision. The following section of the paper sets the framework for analysis of a bond issuer's joint call/insurance decision. A comparative analysis of the magnitude of the interest cost savings foregone for different bond structures under multiple economic scenarios is presented. The paper concludes with a summary of the findings.

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EXHIBIT 3

MUNICIPAL FINANCE OFFICERS ASSOCIATION, DISCLOSURE GUIDELINES FOR STATE AND LOCAL GOVERNMENT SECURITIES (1976)

Disclosure Guidelines for Offerings of Securities by State and Local Governments

Municipal Finance Officers Association
December 1976

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Preface

During the past two years, disclosure on municipal bond offerings has been a topic of much discussion. The Municipal Finance Officers Association (MFOA) anticipated this issue and in 1974, they began work under a National Science Foundation Grant to study a variety of disclosure questions. One area of this project was designed to culminate in a set of disclosure standards. MFOA intended that these standards would provide greater protection to investors through increased disclosure and through standardization of disclosure practices. In November 1975, an exposure draft of *Disclosure Guidelines for Offerings of Securities by State and Local Governments* was released for public discussion and comment.

The draft guidelines received wide dissemination, and there was strong interest in their improvement and ultimate market acceptance. During 1976, MFOA sponsored a series of seminars for discussion of the guidelines and of a broad range of disclosure issues. A digest was prepared of the many excellent written comments that were received by MFOA. A Revision Drafting Committee, consisting of representatives of issuers, dealers, investors and professional groups, was appointed to review the comments and to revise the draft. The MFOA Committee on Governmental Debt and Fiscal Policy worked closely with this Revision Drafting Committee and with the MFOA Executive Board in producing the present guidelines.

The guidelines in this publication were approved and commended for use by municipal bond issuers on December 4, 1976, by the MFOA Executive Board. They are suggestions of information which may be disclosed in offerings of municipal securities. These guidelines are not intended to be legally binding. Rather, they represent information that usually should be included in official statements because it would be relevant to investors on most occasions for most issues.

The draft has been revised in a number of respects throughout the entire document. But the principal revisions are:

(1) Restructuring of the guidelines for a more readable and better organized document;

(2) Specification of the financial data suggested for presentation;

(3) Condensation of the introductory material; and

(4) Deletion of explicit positions regarding informational availability and underwriting data.

These guidelines represent an industry consensus on disclosure, and are a significant improvement over the exposure draft. They will be subject to periodic review and updating as experience is gained in their use.

Donald W. Beatty
Executive Director
Municipal Finance Officers Association

Table of Contents

Introduction to Disclosure Guidelines

These guidelines are designed for use in providing information to investors in connection with offerings of securities of state and local governments. In most cases, such information is provided to investors by state and local governments through investment dealers and dealer banks that purchase securities for reoffering. The information suggested in these guidelines is intended to produce an official statement which will be acceptable for such purpose. It is not intended, however, to create disclosure requirements or a legal obligation to disclose any or all items of information that are suggested.

The guidelines suggest material which an investor might consider of importance in making an informed investment decision. Such data is generally found in financial reports, budget documents, and other accessible material. Information in the issuer's records or which can be obtained from another source, such as U.S. Government census reports, normally should be obtained, compiled and reported. There should be an appropriate indication of the source of the information, if the source is other than the issuer. It is possible that other information, not suggested herein, may at times be material and in such cases should be provided. Certain types of issuers or circumstances might require additional information in order to give an adequate description of such issuer or circumstances. However, there may also be cases in which some of the suggested information is unnecessary or irrelevant. For instance, matters bearing principally on the long-term prospects of the issuer, such as demographic or economic data, may not be material in the sale of certain short-term obligations. The overriding consideration is to provide a complete, accurate, and objective description of those factors that relate to the securities being offered and that are necessary to make an informed investment decision.

The order of presentation suggested in the guidelines should not necessarily be deemed to recommend a specific order of presentation of information in the official statement. The information set forth in the official statement should be presented in a concise, understandable fashion. Consideration should be given to setting forth material in a manner which will give appropriate emphasis to such material in view of its relative importance.

Some sections of these guidelines are more appropriate for offerings of general obligation securities, while others are more appropriate for offerings of revenue securities or of special obligation securities. Certain sections are not applicable to obligations of state governments. In some cases, a particular security may combine characteristics of a general obligation security, a revenue security, or a special obligation security. For example, revenue sources from an enterprise or enterprises* or a specific tax may be the primary source of payment and security for an issue of bonds, while additional security is furnished by the general taxing power of the issuer. Under these circumstances, consideration should be given to providing the appropriate information suggested as to both types of securities. These guidelines may not be appropriate for disclosure in official statements for offerings of obligations issued for the purpose of providing pollution control or industrial facilities where the payment of the securities is solely dependent upon payment by the private entity involved in the offering.

Provision should be made to assure the availability of the official statement to prospective purchasers of the securities. However, in the case of direct negotiations with sophisticated purchasers, an official statement may not be necessary where the purchasers acknowledge that they have sufficient access to facts and have made such investigation as they deem necessary to decide whether to purchase the obligations.

These guidelines are not intended to establish standards of legal sufficiency. No implication is intended that previously prepared documents have been inadequate, or that any offering document prepared in the future is inadequate solely because it does not comply with suggestions in these guidelines. However, it should be emphasized that those preparing the official statements should take great care to see that they are accurate, complete and not misleading. Responsibilities of the various participants with respect to the development of information in the official statement should be described in the official statement. Where appropriate, the various participants or attesting officials should consider the necessity of certifying to the accuracy and completeness of the material they have prepared.

*As used in these guidelines, "enterprise" means any undertaking or activity relating to the construction, acquisition, operation, or maintenance of facilities or services or otherwise performing governmental functions which are expected to generate revenues which are to be a material source of payment for the principal of and interest or premium on the securities.

SECTION I

Cover Page of the Official Statement

A cover page is sometimes used to describe certain details of the securities being offered. In these instances, the details which may be set forth include the following:

(1) The total principal amount of the securities.
(2) The name of the issuer (with appropriate identification).
(3) The type or title of issue being offered (e.g., general obligation, water revenue, etc.).
(4) The date of the obligations, interest payment dates, and the date from which interest is paid.
(5) The denominations in which the securities are being offered.
(6) Registration and exchange provisions.
(7) Trustee and paying agents.
(8) Redemption features, if any, including sinking fund provisions.
(9) Maturity date and principal amount by maturity in columnar form.*
(10) A statement of the tax status of interest on the securities being offered.

*In the reoffering, interest rates, yields or prices should be specified. In the case of a public sale, it is suggested the issuer should provide space for such interest rates and reoffering yields or prices.

Additional information sometimes set forth on the cover page includes:

(11) Ratings by the various rating agencies (see "Miscellaneous").
(12) Designation of new issues.
(13) Brief statement of the authority for issuance.
(14) Anticipated date and place of delivery.
(15) Summary statement of the security or source of payment.

SECTION II

Introduction to the Official Statement

The purpose of the introduction to the official statement is to set forth, in summary form, the salient portions of information with respect to the identification of the issuer; the statutory, constitutional or other basis pursuant to which the securities are being issued; the purposes for which the securities are being issued; and the security and source of payment for the securities. In addition, special circumstances that are of importance to the making of an informed investment decision and their possible consequences for investment risk should be described. The issuer should be briefly described as well as the project which is to be undertaken. The purpose for which the securities are issued should include a description of the application of proceeds, including the payment of costs of acquisition or construction; the making of deposits in debt service or capitalized interest funds; and the payment of costs incidental to the financing. The security and source of payment for the securities should be briefly described and reference to more specific information concerning such security and source of payment should be made. Appropriate references to more detailed information contained elsewhere in the official statement should be included.

SECTION III

Securities Being Offered

Provide the following information to the extent relevant regarding the securities being offered and regarding the authorizing and governing instruments:

A. Consideration should be given to setting forth those items, 1- 9, that appear on the cover page. Amplification of such items should be presented, where appropriate. In any case, set forth such items where they do not appear on the cover page.

B. Describe the pertinent provisions of the state constitution, statutes, resolutions and such other documentation that authorize the issuance of the securities.

C. State the principal purposes for which the net proceeds of the offering are authorized or proposed to be used and the approximate amount authorized or proposed for each purpose. Furnish a brief description of any program of construction or addition of equipment to be financed from the proceeds of the sale of the securities. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds. If more funds are needed to accomplish the stated purposes, indicate the projected sources of such funds. State whether such other funds will be definitely available upon completion of the offering, and if not, describe the conditions which must first be satisfied. If the proceeds may be used for other purposes, describe the other purposes and amounts which may be used. If 15% or more of the proceeds has not been allocated for particular purposes, a statement indicating the amount of such unallocated proceeds should be given. If the aggregate expenses of the offering to be paid by the issuer, other than underwriting commissions, are 5% or more of the net proceeds of the offering, state the aggregate amount of all such expenses in connection with the issuance and distribution of the securities.

D. Describe provisions with respect to the security and sources of payment for the securities. State the relationship of the priority of payment or lien to any outstanding securities or other obligations of the issuer. If the securities are secured by physical properties, assets or revenues, such physical properties, assets or revenues and the provisions for their release or substitution should be described. If payment of the principal of or interest or premium on the securities being offered is guaranteed or insured in any respect, name the guarantor or insurer, state the terms and conditions of the guaranty or insurance and furnish such financial and other information as to the guarantor or insurer as may be appropriate. Describe any known claim of the guarantor or insurer which may be asserted as a defense in a suit on the guaranty or insurance.

E. Describe provisions regarding (1) the flow of funds from enterprise revenues, including any restrictions thereon, (2) the creation or maintenance of reserves, and (3) maintenance or insurance of properties. Describe any proposed investment of the proceeds or the reserves. Describe the parties who will hold and control the proceeds of the securities and the method by which such proceeds will be expended.

F. Describe the purposes for which additional debt may be issued, including provisions permitting or restricting the issuance of additional securities or the incurrence of additional debt. Describe legal requirements, such as voter approval, which must be met in connection with debt issuance. In offerings of revenue securities, describe the enterprise's authority to borrow funds for various purposes and the conditions under which the enterprise is empowered to issue varying types of indebtedness.

G. State the name of the trustee or fiscal agent, if any; summarize the rights and duties of the trustee or fiscal agent; and state the important conditions and the percentage of securities which would require the trustee or fiscal agent to take any action. Describe any indemnification the trustee or fiscal agent may require before proceeding to enforce the rights of holders of the securities. Indicate any business relationship of the trustee or fiscal agent with the issuer as security holder, depositary or otherwise. If the trustee or fiscal agent acts in the capacity of trustee or fiscal agent for the holders of other securities of the issuer, discuss such relationship or capacity.

H. Describe pertinent provisions of the state constitution, statutes, or judicial decisions that could affect the status of or priority for the bondholder.

I. State whether the terms of the securities, including provisions with respect to security or source of payment, may be modified.

J. Summarize provisions in the securities being offered, the indenture or other authorizing or governing instruments regarding specified events which constitute defaults and the remedies therefor under the securities and whether any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of such securities, indentures or instruments. If the issuer cannot be sued for failure to perform its obligations to the holders of the securities or if judgments resulting from such suit are not enforceable against the issuer, such facts should be disclosed.

SECTION IV

Description of Issuer and Enterprise

A. Issuer. The information suggested herein would normally apply to offerings of general obligation securities which are payable from ad valorem taxation or other taxes.

Data should be given to provide sufficient background and general information regarding the issuer. Investors should generally be informed of factors which indicate the ability of the issuer to impose and collect, and the ability of its citizens to pay, taxes and other receipts which can be used to discharge the issuer's obligations. The information presented herein would normally include the issuer's range and level of services and the capacity of the issuer to provide such services. In addition, under most circumstances, a discussion of important population, economic, and educational data should also be presented.

Examples of the types of information which may be appropriate are:

(1) A statement indicating the year in which the issuer was established; the name of the state or other jurisdiction under the laws of which it was established; the form of government, such as mayor-council or city manager; the important powers and the governmental organization of the issuer; and relationships to and areas of shared responsibilities with other governmental entities.

(2) A list of the executive officials of the issuer. Discuss the manner in which the principal officials of the issuer are chosen, their respective terms, and the authority and method by which policy and program decisions are made.

(3) A brief description of (a) the principal governmental services performed by the issuer; (b) services which the issuer is required to perform; (c) the revenue sources for the services, and the degree of self-support of any service activity, described pursuant to (a) and (b); (d) the extent to which similar or differing governmental services are performed by or performed in conjunction with other governmental

entities; and (e) any recent major changes or interruptions in such services.

(4) A discussion of the general character of the principal facilities of the issuer. The material should allow the investor to appraise the ability of the issuer's principal facilities to continue to provide issuer services. Describe the capital improvements plan which indicates future construction requirements of the issuer and the currently projected methods of financing such expenditures.

(5) A statement or description of historical and current data concerning and estimates of the issuer's population, per capita income, median age, education levels, school enrollment, and unemployment rate.

(6) A statement or description of historical and current data concerning commercial and residential construction, commercial and savings bank deposits, property valuation, and values in housing stock.

(7) A statement or description of historical and current data concerning (a) the principal industries, commercial and governmental entities, and other employers in the issuer's immediate geographical area; (b) the number of persons employed by such industries, entities, or employers; (c) the economic stability of such industries, entities, or employers; and (d) the economic effects of any recent addition or loss of major industrial, commercial or governmental entities, or other employers.

(8) The numbers of persons presently employed and the percentage of employees of the issuer who belong to unions or other collective bargaining groups. Characterize employee relations.

B. Enterprise. The following information normally should be disclosed in offerings of revenue securities which are secured from the earnings of an enterprise. However, to the extent that the sources of revenues to pay debt service on the securities are dependent on the viability of a service area, certain material suggested in the preceding section should be set forth. Generally in the case of securities which are paid from a multiplicity of similar facilities or sources, such as obligations of a state housing authority or a student loan authority, the information suggested in this section is not necessary regarding each such facility or source on an individual basis.

(1) State the year in which the enterprise was organized, its form of organization (such as "a corporation," "an unincorporated association," "a department of the issuer" or other appropriate statement) and the name of the state or other jurisdiction under the laws of which it was organized. Name the municipalities, counties, and states in which the enterprise is located and describe the service area.

(2) List the executive officials of the enterprise. Discuss the manner in which the executive officials of the enterprise are chosen, their employment over the past five years, their respective terms, and the authority and method by which policy and program decisions are made.

(3) Describe the location and general character of the principal facilities of the enterprise. If any property is leased or otherwise not held in fee or is held subject to any major encumbrance, discuss briefly the important factors in this regard. Provide sufficient information so that an investor may be able to appraise the ability of the enterprise to continue to provide its services. Such information should be furnished that will inform investors of the extent of utilization and the productive capacity of the enterprise's facilities. Itemization and detailed description of the facilities generally need not be given. Describe the capital improvements plan which indicates future construction requirements of the enterprise and the currently projected methods of financing such expenditures.

(4) If the proceeds of the offering will be used for the construction of all or part of the enterprise, briefly describe the new facilities, including their proposed purposes, productive capacity, anticipated life, and nature of construction. State the dates proposed for the commencement and completion of the construction; the dates proposed for the commencement of operations in the new facilities; the construction arrangements and principal contractors, engineers or other parties participating in the construction; the amount and location of the land on which the facilities are to be located; and the rights of the issuer or the enterprise in relation to the land, such as whether the land is held in fee, is leased, is held subject to encumbrances, or must be condemned or otherwise acquired before use.

(5) If the proceeds of the offering will be used for construction of all or part of the enterprise, reference should be made to any relevant engineer's or financial feasibility reports or studies on the feasibility of such construction as a part of the enterprise's operations. Name the parties preparing the reports or studies and whether the consent to the reference to such reports or studies has been obtained. Reference should also be made to any other reports or studies which may have a bearing on the conclusion of feasibility. All references should describe the material conclusions of the reports or studies, insofar as such conclusions relate to the use of proceeds as set forth in the official statement. If no such report or study has been made, a statement should be made to that effect, together with an explanation of the reasons therefor.

(6) Describe the operations performed and intended to be performed

by any new or existing enterprise and the general development of such operations during the past five years, or such shorter period as the enterprise may have been engaged in operations. The description should include, but not be limited to, information as to matters such as the following areas (if the enterprise is engaged or will engage in more than one activity, provide appropriate documentation and description for each of the principal activities):

(a) The principal services rendered or to be rendered by the enterprise, and the principal users of, or service area for, including any reliance on seasonal factors related to, such services. Describe recent significant changes in the kinds of services rendered, or in the users or area served.

(b) Whether the enterprise has or will have an exclusive position in its service area, and if not, a description of the competitive conditions in the service area and the present and proposed competitive position of the enterprise, if known or reasonably available to the issuer.

(c) The numbers of customers of the enterprise at present and as proposed after the completion of construction into categories according to major sources of revenues, and an appropriate categorization of ranges reflecting amounts paid or to be paid by customers for the enterprise's services. If an important part of the operations is or will be dependent upon a single customer or a few customers, the loss of any one or more of whom would have an adverse effect on the operations or financial condition of the enterprise, give the names of the customers, their relationship, if any, to the enterprise, and significant facts regarding their contribution to the operations of the enterprise. Describe also any federal, state, or local governmental program which provides an important part of the enterprise's revenues.

(d) The parties responsible for determining and modifying rates, together with related limitations on the powers of such parties and rights of review of the enterprise or others; and any rate covenant or similar agreement on the part of the issuer or the enterprise, and the degree to which such covenant or agreement is designed to provide for debt service, and operating and any other important expenses.

(e) The sources and availability of raw materials essential to the enterprise's present and proposed operations.

(f) The status of licenses, permits and franchises required to be held by the enterprise. Describe any federal, state or local governmental regulation of the operations of the enterprise, including significant environmental protection requirements, and the effects of such regulation on the enterprise's present and proposed operations and on new construction.

(g) The numbers of persons presently employed and to be employed after completion of construction, and the percentage of employees of the enterprise who belong to unions or other collective bargaining groups. Characterize employee relations.

(h) If the enterprise has not received revenues from operations for the entire fiscal year prior to the date of the sale of the securities being offered, provide an analysis of the enterprise's current year's plan of operations, including a description of any results that may have been experienced at the time of the offering and a discussion of known factors and important assumptions related to operations for the next fiscal year. If such information is not available, the reasons for its not being available should be stated. Disclosure relating to any plan should include such matters as:

(i) A statement in narrative form indicating the enterprise's plan of construction. The schedule for completion and categories of expenditures and sources of cash resources should be identified.

(ii) Any anticipated large acquisition of plant and equipment and the capacity thereof.

(iii) Other matters which may be important to the enterprise's construction and operations.

SECTION V

Debt Structure

The following suggested information is intended to describe various important factors related to the debt structure of the issuer or enterprise, including authority to incur debt, debt trends, the size of prospective debt burden, and rates of retirement. The tax related information is suggested for general obligation securities. Sufficient information should be provided by the issuer or enterprise so that an investor will be able to evaluate tax and other revenue sources in relation to the obligations or commitments of the issuer or enterprise.

A. Furnish the information of the type suggested by the following table as to appropriate categories of long-term and short-term securities and other indebtedness of the issuer or enterprise:

Category of indebtedness	Amount authorized	Amount outstanding as of [date] (less sinking fund installments paid to such date)	Amount to be outstanding
	$	$	$

The "appropriate" categories of indebtedness will vary from issuer to issuer and from enterprise to enterprise. Generally, the purpose of the indebtedness, or the maturity of the indebtedness, e.g., short-term debt, may be used as a basis for categorization. The description should also include a separate section on other commitments, such as long-term leases, lease-purchase obligations, installment purchase obligations, guaranteed debt, moral obligations, other contingency forms of debt and other forms of "off balance sheet" indebtedness.

Debt should be regarded as "authorized" when all legal steps have been taken by the issuer for its authorization for issuance, such as required approval by the city council or the voters. However, actions requiring only minor administrative performance normally should not be regarded as a stage for the authorization of debt.

The amount of indebtedness outstanding should be as of the latest practicable date, within the previous 120 days, with any major changes in debt position including any new obligations issued during the interim appropriately indicated. In stating the amount to be outstanding, give effect to the securities being offered including the retirement of outstanding debt with proceeds of such securities and, in addition, give effect to required or permitted debt retirement from existing funds.

B. Furnish a debt service schedule of the outstanding indebtedness of the issuer or enterprise including required payments of principal and interest, and where appropriate, authorized indebtedness to the final maturity date of all outstanding securities. Debt payable from different tax or revenue sources should be shown in separate columns as well as in the "Total" column. Include in the schedule debt service on the securities being offered. Indicate in footnotes to the schedule any assumptions, such as interest rates on authorized but unissued debt, on which information in the schedule is based. The schedule may be presented in substantially the following tabular form:

Fiscal year ending [date]	Principal	Interest	Total
19—	$	$	$
19—			$
19—			$
.			.
.			.
.			.
(year)			$

C. Furnish the information called for by the following table as to indebtedness of overlapping governmental entities. The information should be as of the latest practicable date, within the previous 120 days, with any major changes in debt position during the interim appropriately indicated. Unless inappropriate, the information in the last column should be based upon the estimated true valuation of real property in the respective jurisdictions.

Name of overlapping entity	Amount of authorized debt	Amount of outstanding debt (less sinking fund as of [date])	Percent of outstanding debt chargeable to persons or property in issuer's boundaries
	$	$	%

D. Give information as of the end of each of the issuer's last five fiscal years with respect to the issuer's (1) debt per capita; (2) debt expressed as a percentage of total assessed valuation of taxable real and personal property; (3) debt expressed as a percentage of total estimated true valuation of taxable real property; and (4) debt per capita expressed as percentage of estimated per capita income of individual taxpayers residing in the jurisdiction.

E. State the amounts of long-term and short-term indebtedness of the issuer or enterprise outstanding as of the end of each of its last five fiscal years.

F. Describe any legal debt or tax limit of the issuer or enterprise, the legal source of the limit, the indebtedness or tax rates chargeable to the limit, and the unused borrowing or taxation margin.

G. If any securities of the issuer have been in default as to principal or interest payments or in any other material respect at any time in the last 25 years, state the circumstances giving rise to such default, including descriptions of the relevant provisions of the securities and authorizing and governing instruments and the amounts involved. State whether such default has been terminated or waived, and if so, the manner of such termination or waiver.

SECTION VI

Financial Information

The suggested information that follows is intended to disclose important factors related to the financial condition and results of operations of the issuer or enterprise. The section is divided into two parts: first, there is suggested information that would summarize the financial practices and recent results of operations of the issuer or enterprise; the second part sets forth the information to be presented as the financial statements of the issuer or enterprise for the last two fiscal years.

A. General Description of Financial Practices and Recent Results of Operations:

(1) Furnish in comparative columnar form a summary of operations for the fund/account groups which would provide information pertinent to the securities being offered. Such information should be provided for each of the last five fiscal years and, in the case of enterprises and in those unusual circumstances where it is otherwise appropriate, for the latest practicable date for interim periods of the current and prior fiscal year if the official statement is dated more than 120 days after the last fiscal year.

Information regarding the operations of enterprise and intragovernmental service funds should be presented separately from information regarding the operations of the general and other funds of the governmental entity.

(a) Information regarding operations of the general and other fund/accounts may be presented on a combined basis as appropriate. Such summary should include major categories of actual revenues and expenditures and comparable budgeted amounts.

In addition, beginning and ending fund balances and transactions reported as adjustments to fund balances should be included.

(b) Subject to appropriate variation to conform to the nature of the operations of an enterprise or intragovernmental service fund, the summary and discussion should include: operating revenues; operating expenses; interest expense; income from continuing operations; income from discontinued operations; extraordinary items; the cumulative effects of changes in accounting principles; and net income or loss. The summary should also include the amount of any changes in retained earnings other than net income or loss, and the amount of retained earnings at the end of each of the fiscal periods presented.

(c) Following each summary of operations, include a discussion of the material trends and changes and the reasons therefor, related to the components of such summary. For example, if debt service, as a percentage of total expenditures, has increased significantly in recent years, describe the conditions which contributed to the trend. Furthermore, if certain revenues or expenditures are dependent on the financial policies or practices of another governmental entity, state the amounts involved and describe the relationship of such other entity to such issuer or enterprise. In addition, such discussion should include the effect of the change in accounting principles or procedures during any of the years presented.

(d) Describe any known facts which would significantly affect any financial information presented or the future financial operations of the issuer or enterprise.

(2) Describe generally the accounting practices of the issuer or enterprise. Indicate any important deviations (and the effects thereof, if quantifiable) from generally accepted governmental accounting principles, as presented and recommended in the National Council on Governmental Accounting (formerly National Committee on Governmental Accounting) publication, *Governmental Accounting, Auditing, and Financial Reporting* and the Industry Audit Guide of the American Institute of Certified Public Accountants, entitled *Audits of State and Local Governmental Units*, as such generally accepted governmental accounting principles are supplemented and modified from time to time. The information recommended herein may be cross-referenced to the Notes to the financial statement.

(3) Describe the issuer's or enterprise's budgetary processes. The description should include matters such as: the parties responsible for the development of operating and capital budgets; the processes by which the budgets are approved and adopted; legal requirements for balancing such budgets and institutional mechanisms to assure

achievement of that goal. Summarize the pertinent current operating and capital budgets. State whether the issuer or enterprise has conformed to such budgets to date, and if not, the significant variations which have occurred or are expected to occur. Describe the reasons for any material differences between the budgets and the actual financial results for the last five fiscal years and the current fiscal year.

(4) If the securities being offered are payable only from particular receipts of the issuer, such as a particular tax or assessment, describe the receipts and give sufficient historical and other data to indicate the reliability of such receipts to meet debt service on the securities.

(5) If the obligations are secured in whole or in part by taxes of any type, describe briefly the manner in which such taxes are levied and collected. Where appropriate, describe briefly the manner in which property valuations and assessments are determined. Include descriptions of (a) the manner in which delinquent taxes are collected and the result of such collection efforts; (b) the interest and penalty charged on delinquent taxes; (c) important changes during the last five years in tax assessment, levy, or collection practices; and (d) the reasons for such changes. State the value of total tax title liens owned by the issuer as of the end of each of its last five years and as of a recent date. Describe briefly the procedures followed in foreclosure. Describe the priority of tax claims of the issuer over other indebtedness of taxpayers.

(6) Give in tabular or other appropriate form with respect to the issuer, as of the end of each of its last five fiscal years and as of a recent date, information as to (a) its assessed valuation of taxable real property; (b) its estimated true valuation of taxable real property; (c) its assessed valuation of taxable personal property; and (d) the assessed valuation of taxable real property expressed as a percentage of the estimated true valuation thereof. Segregate such information as to industrial, commercial, utility, and residential properties. State in tabular or other appropriate form the total tax levy and the accumulated amount of delinquent taxes as of the end of each of the issuer's last five fiscal years and the tax delinquency rate for each of such fiscal years and for the current fiscal year to date. Describe recent borrowing against such delinquent taxes and any anticipation of collection of delinquent taxes in budgets for current or future years. State the accounting policies applied in writing off delinquent taxes. For taxes and other revenue sources other than property taxes, include descriptions of the significance thereof to the issuer and recent volume of activity generating such funds.

(7) A table setting forth the ten largest taxpayers of the issuer, where appropriate and not prohibited by law, should be presented. State the

amount of taxes paid by each such taxpayer, the percentage of the total tax levy or tax collections represented by such amount, and in the case of property tax levies the assessed valuation of taxable real property of each such taxpayer.

(8) With respect to interim borrowing for operational purposes such as revenue anticipation notes or tax anticipation notes, present the appropriate anticipated cash flow.

(9) If the proceeds from the sale of any securities (other than revenue anticipation notes or tax anticipation notes issued against revenues or taxes of a current fiscal year) or any nonrecurring revenues have been used for current operating expenses at any time in the last ten years, describe the circumstances giving rise to such use, including the amount used in each of such years.

(10) If payments on outstanding securities or other obligations have been met through loans from other governmental fund sources, indicate the sources, the amounts involved, the purpose (as for payment of principal, interest, or operating cost), and any commitments for repayment of the loans.

Describe briefly any federal, state, or other legislation, program, or procedure which would apply specifically to the issuer in times of financial emergency.

(11) Describe briefly the issuer's or enterprise's pension or other public employee retirement plans and the methods and basis (e.g., actuarial funding or "pay-as-you-go") on which such plans are financed. State any adverse trends or factors in the financing or operation of such plans as they relate to the employer's contributions or liabilities to the plans. To the extent that there are unfunded accrued liabilities, state the amount of such liabilities as of the most recent actuarial study or estimate and indicate the date of such study or estimate. Information concerning the pension plan contained in the financial statements included in the official statement should be cross-referenced.

Liabilities and costs pertaining to other employee benefits such as vacation and sick leave may be material. When that is the case such liabilities and pertinent details should likewise be disclosed.

B. Financial Statements

Uniformity in the presentation of financial information and the consistent application of accounting principles are essential for adequate financial reporting. To that end, it is suggested that financial statements be prepared and presented in accordance with generally accepted governmental accounting principles, as modified from time to time,[1] and that examinations and reports on such financial statements conform with generally accepted governmental auditing standards.[2]

If financial statements are prepared in conformity with laws applicable to the issuer and their presentation does not conform with generally accepted governmental accounting principles, the material differences between such laws and generally accepted accounting principles should be disclosed and, if practicable, the effects of such differences should be stated. It is suggested that financial statements be examined and reported upon by an independent certified public accountant, an independent licensed public accountant, or an independent governmental audit organization. If such an examination and resultant report does not conform with generally accepted governmental auditing standards, the nature of the audit and how it differs from such standards should be disclosed.

Consent of the Certified Public Accountant or other independent auditor should be sought if the name of the independent auditor is used in any way in connection with the financial statements or financial data included in the official statement. If such consent is not obtained, such fact and the reasons therefor should be disclosed.

The financial statements should be included in the official statement for those funds and account groups which would provide information pertinent to the securities being offered. The information would normally include financial statements for those funds which will provide the resources to discharge the issuer's obligations to the holders of the securities being offered and for other funds or account groups which would provide information material to such funds. In all cases, if some fund other than the fund with the primary obligation either requires substantial financing from or furnishes substantial financing for the fund with the primary obligation, financial statements for the other funds should be included. Generally, the financial statements of an issuer or enterprise will appear at the end of the official statement.

The financial statements for each fund and account group included in the official statement should be presented for two years and should

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[1]As contained in the following authoritative sources: *Governmental Accounting, Auditing, and Financial Reporting* (1968) published by the National Council on Governmental Accounting (NCGA); *Audits of State and Local Governmental Units* (1974) published by the American Institute of Certified Public Accountants (AICPA); other pronouncements of the NCGA and AICPA; and pronouncements of the Financial Accounting Standards Board.

[2]As contained in the *Statements on Auditing Standards* (1976) published by the American Institute of Certified Public Accountants; and in *Standards for Audit of Governmental Organizations, Programs, Activities and Functions* (1972) published by the U.S. General Accounting Office and *Audits of State and Local Governmental Units* (1974) published by the American Institute of Certified Public Accountants.

include all basic financial statements. Depending upon applicability to the respective funds, the basic financial statements would include balance sheets, statements of revenues and expenditures, statements of changes in fund balance, statements of income, statements of retained earnings, and statements of changes in financial position.

(1) *General Obligation Debt.* Normally, when general obligation debt is being offered, financial statements should be included for the general fund, special revenue funds which provide revenues to pay a substantial portion of the total expenditures of the issuer and which relate to major governmental functions, debt service funds, and general long-term debt group of accounts. In addition, if an enterprise or other fund either requires substantial financing from the funds relevant to the securities being offered or furnishes substantial financing for such relevant funds, financial statements for such enterprise or other funds should be included.

(2) *Debt Other Than General Obligation Debt.* When the source of the resources to discharge the issuer's obligations to the holders of the securities being offered is limited to a particular fund, e.g., revenue of an enterprise fund, normally, only the financial statements of that fund need be presented. Such financial statements should disclose pertinent restricted and unrestricted accounts as provided in existing bond indentures, ordinances or similar instruments. When the source is primarily a particular fund but the obligation is also payable from another fund, the financial statements of both funds should be included in the official statement. If the issuer also pledges its full faith and credit, all financial statements relevant to the source of payment for the securities being offered should be included.

(3) Full disclosure in accordance with generally accepted governmental accounting principles requires that financial statements be accompanied by footnotes which supplement or clarify the data contained in the financial statements. Typical footnotes provided with a governmental entity's financial statements include the following:

- A summary of significant accounting policies.
  - Principles of accounting.
  - Identification and definition of included funds.
  - Basis of accounting.
  - Budgetary policies.
  - Accounting policies for specific accounts.
  - Fixed assets.
- Bond indenture provisions relating to accounting and reporting.

- Long term debt provisions.
- Leases and other commitments.
- Provisions of public employee retirement systems, including costs, liabilities, unfunded obligations, actuarial assumptions and most recent valuations.
- Contingencies.

(4) Supporting schedules to financial statements should be included to provide significant detail where necessary to further disclose the financial position or results of operations of the various funds (groups of funds) included in the offering statement.

SECTION VII

Legal Matters

A. Describe any pending legal proceedings which may materially affect the issuer's or enterprise's ability to perform its obligations to the holders of the securities being offered, including the effects of the legal proceedings on the securities being offered and on the source of payment therefor. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings, and the relief sought. In appropriate cases, include or summarize, with the consent of counsel, an opinion of counsel as to the merits of the legal proceedings. Provide similar information as to legal proceedings which have been threatened to a degree which constitutes a material possibility that they will be instituted. An opinion of counsel with respect to such legal proceedings may, with the consent of counsel, be included or summarized in the official statement. State the name of such counsel.

B. With the consent of bond counsel, include or summarize the approving legal opinion of bond counsel regarding the issue of the securities, or indicate that such an opinion will be furnished with the securities. State the name of such bond counsel.

C. Describe the tax status of the securities and the interest thereon. With the consent of counsel, include or summarize an opinion of counsel as to such tax status. State the name of such counsel.

D. It is customary for the issuer or enterprise to indicate that at closing a certificate of no litigation will be provided and will state that no litigation is pending to, among other things, (1) restrain or enjoin the issuance or delivery of the securities, (2) contest the authority for, or validity of, the securities, or (3) contest the corporate existence or powers of the issuer or enterprise.

SECTION VIII
Miscellaneous

A. Ratings. If ratings for the securities being offered have been received, state all ratings of the securities being offered and the names of the rating agencies. If no ratings have been obtained or a rating refused for any such securities, a statement should be made to such effect. Changes in any ratings of any securities of the issuer during the preceding two years should be described.

It is suggested that the discussion indicate that (1) such ratings reflect only the views of such agencies and either set forth an explanation of such ratings as described by such agencies or refer the prospective purchaser to such agencies for an explanation of such ratings; (2) there is no assurance that such ratings will continue for any period of time or that they will not be revised or withdrawn; and (3) a revision or withdrawal of the ratings may have an effect on the market price of the securities.

Consideration may be given to stating the ratings in the body of the official statement rather than on the cover page.

(B) Interest of Certain Persons Named in Official Statement. If any person named in the official statement as having prepared or certified an engineering report, feasibility study, or similar analysis included or referred to therein was employed for such purpose on a contingent basis, furnish a brief statement of the nature of such contingent basis. If any such person was or is connected with the issuer as an underwriter, financial advisor, security holder, member of the governing body, executive official, or employee, describe such connection.

(C) Additional Information. Efforts should be made to make available to underwriters and investors specimens or copies of any indenture and other authorizing or governing instruments defining the rights of holders of the securities being offered, or preliminary forms thereof. The availability may be upon request or upon payment by the underwriters or investors of a reasonable copying, mailing and handling charge. The official statement may inform underwriters and investors of the availability of the information and the means of obtaining it. In such event, the description of the terms of the securities being offered may be qualified by reference to such additional information.

EXHIBIT 4

MUNICIPAL FINANCE OFFICERS ASSOCIATION, GUIDELINES FOR USE BY STATE AND LOCAL GOVERNMENTS IN THE PREPARATION OF YEARLY INFORMATION STATEMENTS AND OTHER CURRENT INFORMATION (1978)

Guidelines for Use by State and Local Governments in the Preparation of Yearly Information Statements and Other Current Information

Municipal Finance Officers Association
May 1978

Printed in the United States of America for the
Municipal Finance Officers Association
of the United States and Canada
180 North Michigan Avenue
Chicago, Illinois 60601

Preface

The following Guidelines are designed to assist state and local governments in issuing yearly information statements and in providing other current information to securities holders, potential purchasers of securities in the secondary market, dealers, securities analysts and rating services. Increasingly, it is evident that a need exists for continual communication of information over the life of outstanding bonds.

These Guidelines should not be confused with the *Disclosure Guidelines for Offerings of Securities by State and Local Governments*. There is a great deal of overlap between the informational items suggested in the two documents. But the two are different documents designed for different purposes: The *Disclosure Guidelines for Offerings* suggest information for provision in official statements for offerings of securities, thus providing credit information so that decisions may be made regarding the purchase of the securities offered. Such official statements, which are released shortly before the sale of bond issues, rapidly become outdated. Investors, dealers and analysts need current information in the secondary market on which to base decisions or recommendations to purchase, sell or hold securities. Rating agencies need information to maintain ratings. These Guidelines suggest information to be provided as a basis for such decisions.

There are several means by which the information suggested herein may be disclosed. One such means is that the yearly information suggested in these Guidelines may be included in the *comprehensive* annual financial reports called for in *Governmental Accounting, Auditing, and Financial Reporting*, published by the National Council on Governmental Accounting. The NCGA is developing the concept of general purpose financial statements, and the yearly data suggested in these Guidelines may be combined with any such general purpose financial statements, as well. Such an approach would achieve a unity of the yearly information statements and general purpose financial statements. Alternatively, the information suggested herein may be presented in a document separate from the general purpose financial statements.

The initial public draft of these Guidelines was developed by the MFOA Disclosure Procedures Special Committee appointed on March 30, 1976. The members of the Special Committee were:

William J. Reynolds, **Chairman,** Town Comptroller, Greenwich, Connecticut
Gerard Giordano, Partner, LaBoeuf, Lamb, Leiby & MacRae, New York, New York
Donald R. Hodgman, Partner, O'Melveny & Meyers, Los Angeles, California
Robert Todd Lang, Senior Partner, Weil, Gotshal & Manges, New York, New York
James W. Perkins, Partner, Palmer & Dodge, Boston, Massachusetts
Robert W. Doty, General Counsel, Municipal Finance Officers Association, Washington, D.C.

The draft was revised by the MFOA Disclosure Review Committee appointed in January of 1978, consisting of:

Robert Odell, **Chairman,** City Treasurer, Los Angeles, California
Walter Knowles, Senior Vice President, Commerce Bank of Kansas City, Kansas City, Missouri
Edward Pendergast, Senior Investment Officer, St. Paul Companies, Inc., St. Paul, Minnesota
James W. Perkins, Partner, Palmer & Dodge, Boston, Massachusetts
William J. Reinhart, Special Assistant to the Comptroller, Nashville, Tennessee
William J. Reynolds, Town Comptroller, Greenwich, Connecticut
William R. Snodgrass, Comptroller of State Treasury, Nashville, Tennessee
Peter C. Trent, Executive Vice President and Manager, Municipal Bond Department, Shearson Hayden Stone Inc., New York, New York
Michael S. Zarin, Chief, Finance Division, Law Department, The Port Authority of New York and New Jersey, New York, New York
Robert W. Doty, General Counsel, Municipal Finance Officers Association, Washington, D.C.

The initial draft and this present version of these Guidelines were reviewed by the MFOA Committee on Governmental Debt and Fiscal Policy in 1977 and 1978, respectively. The members of the Committee at the times of review were:

William J. Reynolds, **Chairman** (1977) and member (1978), Town Comptroller, Greenwich, Connecticut
Robert Odell, **Chairman** (1978) and member (1977), City Treasurer, Los Angeles, California
Grover N. Allen, member (1977 and 1978), Director, Mississippi State Bond Advisory Division, Jackson, Mississippi
Harlan Boyles, member (1977), State Treasurer, Raleigh, North Carolina
Andre Blum, member (1977 and 1978), Director of Administration, Madison, Wisconsin
Richard D. Clark, member (1978), Finance Director, City and County of Denver, Colorado
Dennis J. Date, member (1978), Finance Commissioner-Treasurer, London, Ontario.
David L. Donahoe, member (1978), Treasurer, Pittsburgh, Pennsylvania
Harrison J. Goldin, member (1978), Comptroller, New York, New York
Carl V. Husby, member (1977 and 1978), Director of Financial Management, Long Beach, California
Seldon G. Kent, member (1978), Administrative Services Manager, Phoenix, Arizona
Lennox L. Moak, member (1977), Director of Finance, Philadelphia, Pennsylvania
Warren Riebe, member (1977), Finance Director, Cleveland, Ohio
Duane N. Scott, member (1978), Director, Ohio Municipal Advisory Council, Cleveland, Ohio
John M. Urie, member (1977 and 1978), Director of Finance, Kansas City, Missouri
John T. Walsh, member (1977 and 1978), Director of Finance, Hartford, Connecticut
Michael S. Zarin, member (1977 and 1978), Chief, Finance Division, Law Department, The Port Authority of New York and New Jersey, New York, New York

The basic suggestions herein, which correspond to the suggestions in the *Disclosure Guidelines for Offerings of Securities by State and Local Governments*, were drafted in 1975 by MFOA staff and consultants in liaison with dealers and bond counsel, following planning which began in 1974. The product of that drafting process was released in November 1975 as an Exposure Draft of the *Disclosure Guidelines for Offerings*. After a public comment period, a public hearing was held in Washington in March 1976, and a Revision Drafting Committee was appointed as follows:

Donald J. Robinson, **Chairman,** Partner, Hawkins, Delafield & Wood, New York, New York
J. Chester Johnson, then Vice President, Morgan Guaranty Trust Company of New York, New York, New York
Richard Laird, Chief Accountant, Columbus, Ohio
Anthony M. Mandolini, Partner, Peat, Marwick, Mitchell & Co., Chicago, Illinois
David G. Ormsby, Partner, Cravath, Swaine & Moore, New York, New York
Staats M. Pellett, Vice President, Bessemer Trust Company, NA, New York, New York
William R. Snodgrass, Comptroller of State Treasury, Nashville, Tennessee
Peter C. Trent, Executive Vice President, Shearson Hayden Stone Inc., New York, New York
John M. Urie, Director of Finance, Kansas City, Missouri

The work of the Revision Drafting Committee was reviewed by the MFOA Governmental Debt and Fiscal Policy Committee and the MFOA Executive Board prior to the approval of the release of the *Disclosure Guidelines for Offerings* in December 1976. At this point, work began on the Guidelines herein. The initial drafts of these Guidelines were reviewed by the Disclosure Procedures Special Committee during 1977, prior to their release in Exposure Draft form on September 9, 1977, by the Governmental Debt and Fiscal Policy Committee.

The Exposure Draft was made available to and comments were solicited from MFOA members, dealers, bond counsel, investors, accountants, analysts and others during an eight-month comment period. They were discussed at a series of seminars held in six cities during October and November 1977. Comments were solicited in these seminars, as well as in other meetings with state and local officials and other participants in the municipal securities market.

A number of comments were received, containing excellent suggestions for the improvement of the document. Notices were published from time to time in the MFOA newsletter regarding the review process, and this process was culminated in May 1978 with the completion of the work of the Disclosure Review Committee.

Thus, these Guidelines are the product of many months of thought and debate. From its beginning, the project has involved a broad participation of issuers, investors, dealers, banks, legal counsel and accountants.

This breadth of involvement has resulted in an excellent tool which we believe contributes significantly to the process of informational provision in the municipal securities market. We urge state and local issuers to use this tool as an expression of their professionalism.

Donald W. Beatty
Executive Director
Municipal Finance Officers
Association

Table of Contents

Introduction

These Guidelines are designed for use by state and local governments in providing information to securities holders, potential purchasers of securities in the secondary market, dealers, securities analysts and rating services. Many issuers now provide such documents, and the data also often is contained in official statements for offerings of securities when issuers make offerings on a regular basis. While these issuers may be able to move reasonably soon to the preparation of yearly information statements, those who have not recently issued obligations and utilized the *Disclosure Guidelines for Offerings of Securities by State and Local Governments* may need additional time to compile and release the suggested yearly data.

Official statements released shortly before the sale of bond issues rapidly become outdated. Investors and dealers in the secondary market need current information on which to base decisions. The information suggested in these Guidelines is intended to assist in the production of documents which will be acceptable for that purpose. It is not intended, however, to create requirements or a legal obligation to provide information regarding any or all items that are suggested.

These Guidelines suggest material which an investor might consider of importance in making an informed investment decision. Such data generally are found in financial reports, budget documents, and other accessible material. Information in the issuer's records or which can be obtained from another source, such as U.S. Government census reports, normally should be obtained, compiled, and reported. There should be an appropriate indication of the source of the information, if the source is other than the issuer.

It is possible that other information, not suggested herein, may at times be material and in such cases should be provided. Certain types of issuers or circumstances might require additional information in order to give an adequate description of such issuers or circumstances. There also may be, however, cases in which some of the suggested information is unnecessary or irrelevant. The overriding consideration is to provide a complete, accurate, and objective description of those factors that relate to the securities being traded in the market and that are necessary to make an informed investment decision.

The order of presentation suggested in these Guidelines should not be deemed to recommend a specific order of presentation of information in the information statements. MFOA is preparing a Sample Official Statement which indicates in Part II thereof a format which has been found helpful for yearly information statements, and it is suggested that issuers consider that format. The information set forth in the information statements should be presented in a concise, understandable fashion. Consideration should be given to setting forth material in a manner which will give appropriate emphasis to such material in view of its relative importance.

The function of a yearly information statement may be satisfied through availability of other documents containing substantially the same information as would a yearly information statement. For example, official statements used for offerings during the fiscal year may contain all the relevant data. In such a case, the issuer may desire to consider reliance upon a two-part official statement, one part of which contains only offering data which may be detached so that the second part may constitute a yearly information statement. Conversely, yearly information statements may serve as official statements upon the attachment of a part including offering information. By such means, issuers may avoid the preparation of a multiplicity of documents where information remains reasonably stable during the fiscal year.

Some sections of these Guidelines are more appropriate for general obligation securities, while other sections are more appropriate for revenue securities or special obligation securities. Certain sections are not applicable to obligations of state governments. In some cases, a particular security may combine characteristics of a general obligation security, a revenue security, or a special obligation security. For example, revenue sources from an enterprise or enterprises* or a specific tax may be the primary source of payment and security for an issue of bonds, while additional security is furnished by the general taxing power of the issuer. Or the issuer may have both revenue and general obligation securities outstanding. Under these circumstances, consideration should be given to providing the appropriate information suggested as to both

*As used in these Guidelines, "enterprise" means any undertaking or activity relating to the construction, acquisition, operation, or maintenance of facilities or services or otherwise performing governmental functions which are expected to generate revenues which are to be a material source of payment for the principal of and interest or premium on the securities.

types of securities. These Guidelines may not be appropriate for information regarding obligations issued for the purpose of providing pollution control or industrial facilities where the payment of the securities is solely dependent upon payment by the private entity involved.

To insure dissemination of reported information, it is important that procedures be created whereby interested parties may receive information on a continuing basis. Issuers should consider making information available to local news publications for dissemination. Certain issuers, whose securities are widely held or actively traded, also should consider making information available to regional and national news publications.

In addition, it is suggested that issuers consider maintaining a mailing list of all parties who wish to receive information furnished by the issuers and that issuers consider inserting an appropriate notice (not constituting a contractual commitment) in official statements regarding the maintenance of the mailing list. Information may then be mailed to such parties as soon as it is prepared. Issuers also should be prepared to make copies of the information available to parties not listed on the mailing list.

As the foundation for provision of current information, these Guidelines suggest the release of current information on a yearly basis. This should be done at a time when the information is still meaningful, such as within 90 to 150 days after the end of the issuer's or enterprise's fiscal year. Where this is not possible, release of information should be made at the earliest possible time, but in any case, an effort should be made to disseminate the information not later than 180 days after the close of the fiscal year. The information should be prepared for the same fiscal period each year.

These Guidelines also suggest release, other than on a yearly basis, of official statements and of information describing certain events which may have a major effect on an issuer's finances. Such information should be released immediately upon its availability in a reliable form. Issuers should endeavor to obtain reliable information as early as possible so that a prompt release may be made.

These Guidelines are not intended to establish standards of legal sufficiency. No implication is intended that previously prepared documents have been inadequate or that any document prepared in the future is inadequate solely because it does not comply with suggestions in these Guidelines. It should be emphasized, however, that those preparing information should take great care to see that it is accurate and not misleading. Responsibilities of the various participants with respect to the development of information should be described in the information statements.

SECTION I

Cover Page

A cover page for a yearly information statement should contain the following information:

(1) The name of the issuer (with appropriate identification).

(2) The types or titles of outstanding issues (e.g., general obligation, water revenue, etc.)

(3) A reference to the availability of the issuer's comprehensive annual financial report and to the means by which a copy thereof may be obtained, including the name, address and phone number of the official who can provide that copy.

(4) The name, address and phone number of the issuer official(s) who can answer questions about data disclosed in the yearly information statement or who can direct inquiries to the appropriate responsible parties. See MFOA Procedural Statement No. 5.

SECTION II

Table of Contents

On the inside front cover or on the back cover of the yearly information statement, a Table of Contents should appear to indicate in reasonable detail the pages on which particular types of information may be found.

SECTION III
Description of Issuer and Enterprise

A. Issuer. The information suggested herein would normally apply to general obligation securities which are payable from ad valorem taxation or other taxes.

Data should be given to provide sufficient background and general information regarding the issuer. Investors should generally be informed of factors which indicate the ability of the issuer to impose and collect, and the ability of its citizens to pay, taxes and other receipts which can be used to discharge the issuer's obligations. The information presented herein would normally include the issuer's range and level of services and the capacity of the issuer to provide such services. In addition, under most circumstances, a discussion of important population, economic, and educational data should also be presented. Examples of the types of information which may be appropriate are:

(1) A statement indicating the year in which the issuer was established; the name of the state or other jurisdiction under the laws of which it was established; the form of government, such as mayor-council or city manager; the important powers and the governmental organization of the issuer; and relationships to and areas of shared responsibilities with other governmental entities.

(2) A list of the executive officials of the issuer. Discuss the manner in which the principal officials of the issuer are chosen, their respective terms, and the authority and method by which policy and program decisions are made.

(3) A brief description of (a) the principal governmental services performed by the issuer; (b) services which the issuer is required to perform; (c) the revenue sources for the services, and the degree of self-support of any service activity, described pursuant to (a) and (b); (d) the extent to which similar or differing governmental services are performed

by or performed in conjunction with other governmental entities; and (e) any recent major changes or interruptions in such services.

(4) A discussion of the general character of the principal facilities of the issuer. The material should allow the investor to appraise the ability of the issuer's principal facilities to continue to provide issuer services. Describe the capital improvements plan which indicates future construction requirements of the issuer and the currently projected methods of financing such expenditures.

(5) A statement or description of historical and current data concerning and estimates of the issuer's population, per capita income, median age, education levels, school enrollment, and unemployment rate.

(6) A statement or description of historical and current data concerning commercial and residential construction, commercial and savings bank deposits, property valuation, and values in housing stock.

(7) A statement or description of historical and current data concerning (a) the principal industries, commercial and governmental entities, and other employers in the issuer's immediate geographical area; (b) the number of persons employed by such industries, entities, or employers; (c) the economic stability of such industries, entities, or employers; and (d) the economic effects of any recent addition or loss of major industrial, commercial or governmental entities, or other employers.

(8) The number of persons presently employed and the percentage of employees of the issuer who belong to unions or other collective bargaining groups. Characterize employee relations.

B. Enterprise. The following information normally should be provided regarding outstanding revenue securities which are secured from the earnings of an enterprise. However, to the extent that the sources of revenues to pay debt service on the securities are dependent on the viability of a service area, certain information suggested in the preceding section should be set forth. Generally in the case of securities which are paid from a multiplicity of similar facilities or sources, such as obligations of a state housing authority or a student loan authority, the information suggested in this section is not necessary regarding each such facility or source on an individual basis.

(1) State the year in which the enterprise was organized, its form of organization (such as "a corporation," "an unincorporated association," "a department of the issuer" or other appropriate statement) and the name of the state or other jurisdiction under the laws of which it was organized. Name the municipalities, counties, and states in which the enterprise is located and describe the service area.

(2) List the executive officials of the enterprise. Discuss the manner in which the executive officials of the enterprise are chosen, their employ-

ment over the past five years, their respective terms, and the authority and method by which policy and program decisions are made.

(3) Describe the location and general character of the principal facilities of the enterprise. If any property is leased or otherwise not held in fee or is held subject to any major encumbrance, discuss briefly the important factors in this regard. Provide sufficient information so that an investor may be able to appraise the ability of the enterprise to continue to provide its services. Such information should be furnished that will inform investors of the extent of utilization and the productive capacity of the enterprise's facilities. Itemization and detailed description of the facilities generally need not be given. Describe the capital improvements plan which indicates future construction requirements of the enterprise and the currently projected methods of financing such expenditures.

(4) If construction is planned of all or a significant part of the enterprise, briefly describe the new facilities, including the proposed purposes, productive capacity, anticipated life, and nature of construction. State the dates proposed for the commencement and completion of the construction; the dates proposed for the commencement of operations in the new facilities; the construction arrangements and principal contractors, engineers or other parties participating in the construction; the amount and location of the land on which the facilities are to be located; and the rights of the issuer or the enterprise in relation to the land, such as whether the land is held in fee, is leased, is held subject to encumbrances, or must be condemned or otherwise acquired before use. Describe the progress of the construction since the last yearly information statement of the issuer or enterprise.

(5) If construction is planned of all or a significant part of the enterprise, reference should be made to any relevant engineer's or financial feasibility reports or studies on the feasibility of such construction as a part of the enterprise's operations. Name the parties preparing the reports or studies and whether the consent to the reference to such reports or studies has been obtained. Reference should also be made to any other reports or studies which may have a bearing on the conclusion of feasibility. All references should describe the material conclusions of the reports or studies. If no such report or study has been made, a statement should be made to that effect, together with an explanation of the reasons therefor.

(6) Describe the operations performed and intended to be performed by any new or existing enterprise and the general development of such operations during the past five years, or such shorter period as the enterprise may have been engaged in operations. The description should include, but not be limited to, information as to matters such as the following areas (if the enterprise is engaged or will engage in more

than one activity, provide appropriate documentation and description for each of the principal activities):

(a) The principal services rendered or to be rendered by the enterprise, and the principal users of, or service area for, including any reliance on seasonal factors related to, such services. Describe recent significant changes in the kinds of services rendered, or in the users or area served.

(b) Whether the enterprise has or will have an exclusive position in its service area, and if not, a description of the competitive conditions in the service area and the present and proposed competitive position of the enterprise, if known or reasonably available to the issuer.

(c) The numbers of customers of the enterprise at present and as proposed after the completion of construction into categories according to major sources of revenues, and an appropriate categorization of ranges reflecting amounts paid or to be paid by customers for the enterprise's services. If an important part of the operations is or will be dependent upon a single customer or a few customers, the loss of any one or more of whom would have an adverse effect on the operations or financial conditions of the enterprise, give the names of the customers, their relationship, if any, to the enterprise, and significant facts regarding their contribution to the operations of the enterprise. Describe also any federal, state, or local governmental program which provides an important part of the enterprise's revenues.

(d) The parties responsible for determining and modifying rates, together with related limitations on the powers of such parties and rights of review of the enterprise or others; and any rate covenant or similar agreement on the part of the issuer or the enterprise, and the degree to which such covenant or agreement is designed to provide for debt service, and operating and any other important expenses.

(e) The sources and availability of raw materials essential to the enterprise's present and proposed operations.

(f) The status of licenses, permits and franchises required to be held by the enterprise. Describe any federal, state or local governmental regulation of the operations of the enterprise, including significant environmental protection requirements, and the effects of such regulation on the enterprise's present and proposed operations and on new construction.

(g) The numbers of persons presently employed and to be employed after completion of construction, and the percentage of employees of the enterprise who belong to unions or other collective bargaining groups. Characterize employee relations.

(h) If the enterprise has not received revenues from operations for the entire fiscal year prior to the date of the information statement, provide an analysis of the enterprise's current year's plan of operations, including a description of any results that may have been experienced since the time of the preparation of the information and a discussion of known factors and important assumptions related to operations for the next fiscal year. If such information is not available, the reasons for its not being available should be stated. Information relating to any plan should include such matters as:

(i) A statement in narrative form indicating the enterprise's plan of construction. The schedule for completion and categories of expenditures and sources of cash resources should be identified.
(ii) Any anticipated large acquisition of plant and equipment and the capacity thereof.
(iii) Other matters which may be important to the enterprise's construction and operations.

SECTION IV

Debt Structure

The following suggested information is intended to describe various important factors related to the debt structure of the issuer or enterprise, including authority to incur debt, debt trends, the size of prospective debt burden, and rates of retirement. The tax related information is suggested for general obligation securities. Sufficient information should be provided by the issuer or enterprise so that an investor will be able to evaluate tax or other revenue sources in relation to the obligations or commitments of the issuer or enterprise.

A. Furnish the information of the type suggested by the following table as to appropriate categories of long-term and short-term securities and other indebtedness of the issuer or enterprise:

Category of indebtedness	Amount authorized	Amount outstanding as of [date] (less sinking fund installments paid to such date)	Amount to be outstanding
	$	$	$

The "appropriate" categories of indebtedness will vary from issuer to issuer and from enterprise to enterprise. Generally, the purpose of the indebtedness, or the maturity of the indebtedness, e.g., short-term debt, may be used as a basis for categorization. The description should also include a separate section on other commitments, such as long-term leases, lease-purchase obligations, installment purchase obligations, guaranteed debt, moral obligations, other contingency forms of debt and other forms of "off balance sheet" indebtedness.

Debt should be regarded as "authorized" when all legal steps have been taken by the issuer for its authorization for issuance, such as required approval by the city council or the voters. However, actions requiring only minor administrative performance normally should not be regarded as a stage for the authorization of debt.

The amount of indebtedness outstanding should be as of the latest practicable date, within the previous 120 days, with any major changes in debt position including any new obligations issued during the interim, appropriately indicated. In stating the amount to be outstanding, give effect to required or permitted debt retirement from existing funds.

B. Furnish a debt service schedule of the outstanding indebtedness of the issuer or enterprise including required payments of principal and interest, and where appropriate, authorized indebtedness to the final maturity date of all outstanding securities. Debt payable from different tax or revenue sources should be shown in separate columns as well as in the "Total" column. Indicate in footnotes to the schedule any assumptions, such as interest rates on authorized but unissued debt, on which information in the schedule is based. The schedule may be presented in substantially the following tabular form:

Fiscal year ending [date]	Principal	Interest	Total
19—	$	$	$
19—			$
19—			$
.			.
.			.
.			.
(year)			$

C. Furnish the information called for by the following table as to indebtedness of overlapping governmental entities. The information should be as of the latest practicable date, within the previous 120 days, with any major changes in debt position during the interim appropriately indicated. Unless inappropriate, the information in the last column should be based upon the estimated true valuation of real property in the respective jurisdictions.

Name of overlapping entity	Amount of autho- rized debt	Amount of outstanding debt (less sinking fund as of [date])	Percent of outstanding debt chargeable to per- sons or property in issuer's boundaries
	$	$	%

D. Give information as of the end of each of the issuer's last five fiscal years with respect to the issuer's (1) debt per capita; (2) debt expressed as a percentage of total assessed valuation of taxable real and personal property; (3) debt expressed as a percentage of total estimated true valuation of taxable real property; and (4) debt per capita expressed as a percentage of estimated per capita income of individual taxpayers residing in the jurisdiction.

E. State the amounts of long-term and short-term indebtedness of the issuer or enterprise outstanding as of the end of each of its last five fiscal years.

F. Describe any legal debt or tax limit of the issuer or enterprise, the legal source of the limit, the indebtedness or tax rates chargeable to the limit, and the unused borrowing or taxation margin.

G. If any securities of the issuer have been in default as to principal or interest payments or in any other material respect at any time in the last 25 years, state the circumstances giving rise to such default, including descriptions of the relevant provisions of the securities and authorizing and governing instruments and the amounts involved. State whether such default has been terminated or waived, and if so, the manner of such termination or waiver.

SECTION V

Financial Information

The suggested information that follows is intended to indicate important factors related to the financial condition and results of operations of the issuer or enterprise. The section is divided into two parts: first, there is suggested information that would summarize the financial practices and recent results of operations of the issuer or enterprise; the second part sets forth the information to be presented as the financial statements of the issuer or enterprise for the last two fiscal years.

A. General Description of Financial Practices and Recent Results of Operations:

(1) Furnish in comparative columnar form a summary of operations for the fund/account groups which would provide information pertinent to the securities outstanding. Such information should be provided for each of the last five fiscal years and, in the case of enterprises and in those unusual circumstances where it is otherwise appropriate, for the latest practicable date for interim periods of the current and prior fiscal year if the information statement is dated more than 120 days after the last fiscal year.

Information regarding the operations of enterprise and intragovernmental service funds should be presented separately from information regarding the operations of the general and other funds of the governmental entity.

(a) Information regarding operations of the general and other fund/accounts may be presented on a combined basis as appropriate. Such summary should include major categories of actual revenues and expenditures and comparable budgeted amounts.

In addition, beginning and ending fund balances and transactions reported as adjustments to fund balances should be included.

(b) Subject to appropriate variation to conform to the nature of the operations of an enterprise or intragovernmental service fund, the summary and discussion should include: operating revenues; operating expenses; interest expense; income from continuing operations; income from discontinued operations; extraordinary items; the cumulative effects of changes in accounting principles; and net income or loss. The summary should also include the amount of any changes in retained earnings other than net income or loss, and the amount of retained earnings at the end of each of the fiscal periods presented.

(c) Following each summary of operations, include a discussion of the material trends and changes and the reasons therefor, related to the components of such summary. For example, if debt service, as a percentage of total expenditures, has increased significantly in recent years, describe the conditions which contributed to the trend. Furthermore, if certain revenues or expenditures are dependent on the financial policies or practices of another governmental entity, state the amounts involved and describe the relationship of such other entity to such issuer or enterprise. In addition, such discussion should include the effect of the change in accounting principles or procedures during any of the years presented.

(d) Describe any known facts which would significantly affect any financial information presented or the future financial operations of the issuer or enterprise.

(2) Describe generally the accounting practices of the issuer or enterprise. Indicate any important deviations (and the effects thereof, if quantifiable) from generally accepted governmental accounting principles, as presented and recommended in the National Council on Governmental Accounting (formerly National Committee on Governmental Accounting) publication, *Governmental Accounting, Auditing, and Financial Reporting* and the Industry Audit Guide of the American Institute of Certified Public Accountants, entitled *Audits of State and Local Governmental Units,* as such generally accepted governmental accounting principles are supplemented and modified from time to time. The information recommended herein may be cross-referenced to the Notes to the financial statement.

(3) Describe the issuer's or enterprise's budgetary processes. The description should include matters such as: the parties responsible for the development of operating and capital budgets; the processes by which the budgets are approved and adopted; legal requirements for balancing such budgets and institutional mechanisms to assure achievement of that goal. Summarize the pertinent current operating and capital budgets. State whether the issuer or enterprise has conformed to such budgets to date, and if not, the significant variations which have occurred or are expected to occur. Describe the reasons for any material differences between the budgets and the actual financial results for the last five fiscal years and the current fiscal year.

(4) If the securities outstanding are payable only from particular receipts of the issuer, such as a particular tax or assessment, describe the

receipts and give sufficient historical and other data to indicate the reliability of such receipts to meet debt service on the securities.

(5) If the obligations are secured in whole or in part by taxes of any type, describe briefly the manner in which such taxes are levied and collected. Where appropriate, describe briefly the manner in which property valuations and assessments are determined. Include descriptions of (a) the manner in which delinquent taxes are collected and the result of such collection efforts; (b) the interest and penalty charged on delinquent taxes; (c) important changes during the last five years in tax assessment, levy, or collection practices; and (d) the reasons for such changes. State the value of total tax title liens owned by the issuer as of the end of each of its last five years and as of a recent date. Describe briefly the procedures followed in foreclosure. Describe the priority of tax claims of the issuer over other indebtedness of taxpayers.

(6) Give in tabular or other appropriate form with respect to the issuer, as of the end of each of its last five fiscal years and as of a recent date, information as to (a) its assessed valuation of taxable real property; (b) its estimated true valuation of taxable real property; (c) its assessed valuation of taxable personal property; and (d) the assessed valuation of taxable real property expressed as a percentage of the estimated true valuation thereof. Segregate such information as to industrial, commercial, utility, and residential properties. State in tabular or other appropriate form the total tax levy and the accumulated amount of delinquent taxes as of the end of each of the issuer's last five fiscal years and the tax delinquency rate for each of such fiscal years and for the current fiscal year to date. Describe recent borrowing against such delinquent taxes and any anticipation of collection of delinquent taxes in budgets for current or future years. State the accounting policies applied in writing off delinquent taxes. For taxes and other revenue sources other than property taxes, include descriptions of the significance thereof to the issuer and recent volume of activity generating such funds.

(7) A table setting forth the ten largest taxpayers of the issuer, where appropriate and not prohibited by law, should be presented. State the amount of taxes paid by each such taxpayer, the percentage of the total tax levy or tax collections represented by such amount, and in the case of property tax levies, the assessed valuation of taxable real property of each such taxpayer.

(8) With respect to interim borrowing for operational purposes, such as revenue anticipation notes or tax anticipation notes, present the appropriate anticipated cash flow.

(9) If the proceeds from the sale of any securities (other than revenue anticipation notes or tax anticipation notes issued against revenues or taxes of a current fiscal year) or any nonrecurring revenues have been

used for current operating expenses at any time in the last ten years, describe the circumstances giving rise to such use, including the amount used in each of such years.

(10) If payments on outstanding securities or other obligations have been met through loans from other governmental fund sources, indicate the sources, the amounts involved, the purpose (as for payment of principal, interest, or operating cost), and any commitments for repayment of the loans.

Describe briefly any federal, state, or other legislation, program, or procedure which would apply specifically to the issuer in times of financial emergency.

(11) Describe briefly the issuer's or enterprise's pension or other public employee retirement plans and the methods and basis (e.g., actuarial funding or "pay-as-you-go") on which such plans are financed. State any adverse trends or factors in the financing or operation of such plans as they relate to the employer's contributions or liabilities to the plans. To the extent that there are unfunded accrued liabilities, state the amount of such liabilities as of the most recent actuarial study or estimate and indicate the date of such study or estimate. Information concerning the pension plan contained in the financial statements included in the information statement should be cross-referenced.

Liabilities and costs pertaining to other employee benefits such as vacation and sick leave may be material. When that is the case such liabilities and pertinent details should likewise be discussed.

B. Financial Statements

Uniformity in the presentation of financial information and the consistent application of accounting principles are essential for adequate financial reporting. To that end, it is suggested that financial statements be prepared and presented in accordance with generally accepted governmental accounting principles, as modified from time to time,[1] and that examinations and reports on such financial statements conform with generally accepted governmental auditing standards.[2]

[1]As contained in the following authoritative sources: *Governmental Accounting, Auditing, and Financial Reporting* (1968) published by the National Council on Governmental Accounting (NCGA); *Audits of State and Local Governmental Units* (1974) published by the American Institute of Certified Public Accountants (AICPA); other pronouncements of the NCGA and AICPA; and pronouncements of the Financial Accounting Standards Board.

[2]As contained in the *Statement on Auditing Standards* (1976) published by the American Institute of Certified Public Accountants; and in *Standards for Audit of Governmental Organizations, Programs, Activities and Functions* (1972) published by the U.S. General Accounting Office and *Audits of State and Local Governmental Units* (1974) published by the American Institute of Certified Public Accountants.

If financial statements are prepared in conformity with laws applicable to the issuer and their presentation does not conform with generally accepted governmental accounting principles, the material differences between such laws and generally accepted accounting principles should be discussed and, if practicable, the effects of such differences should be stated. It is suggested that financial statements be examined and reported upon by an independent certified public accountant, an independent licensed public accountant, or an independent governmental audit organization. If such an examination and resultant report does not conform with generally accepted governmental auditing standards, the nature of the audit and how it differs from such standards should be discussed.

Consent of the certified public accountant or other independent auditor should be sought if the name of the independent auditor is used in any way in connection with the financial statements or financial data included in the information statement. If such consent is not obtained, such fact and the reasons therefor should be discussed.

The financial statements should be included in the information statement for those funds and account groups which would provide information pertinent to the securities outstanding. The information would normally include financial statements for those funds which will provide the resources to discharge the issuer's obligations to the holders of the securities outstanding and for other funds or account groups which would provide information material to such funds. In all cases, if some fund other than the fund with the primary obligation either requires substantial financing from or furnishes substantial financing for the fund with the primary obligation, financial statements for the other fund should be included. Generally, the financial statements of an issuer or enterprise will appear at the end of the information statement.

The financial statements for each fund and account group included in the information statement should be presented for two years and should include all basic financial statements. Depending upon applicability to the respective funds, the basic financial statements would include balance sheets, statements of revenues and expenditures, statements of changes in fund balance, statements of income, statements of retained earnings, and statements of changes in financial position.

(1) *General Obligation Debt.* Normally, when general obligation debt is outstanding, financial statements should be included for the general fund, special revenue funds which provide revenues to pay a substantial portion of the total expenditures of the issuer and which relate to major governmental functions, debt service funds, and general long-term debt group of accounts. In addition, if an enterprise or other fund either requires substantial financing from the funds relevant to the securities

outstanding or furnishes substantial financing for such relevant funds, financial statements for such enterprise or other funds should be included.

(2) *Debt Other Than General Obligation Debt.* When the source of the resources to discharge the issuer's obligations to the holders of the securities outstanding is limited to a particular fund, e.g., revenue of an enterprise fund, normally, only the financial statements of that fund need be presented. Such financial statements should indicate pertinent restricted and unrestricted accounts as provided in existing bond indentures, ordinances or similar instruments. When the source is primarily a particular fund but the obligation is also payable from another fund, the financial statements of both funds should be included in the information statement. If the issuer also pledges its full faith and credit, all financial statements relevant to the source of payment for the securities outstanding should be included.

(3) Full disclosure in accordance with generally accepted governmental accounting principles requires that financial statements be accompanied by footnotes which supplement or clarify the data contained in the financial statements. Typical footnotes provided with a governmental entity's financial statements include the following:

- A summary of significant accounting policies.
  Principles of accounting.
  Identification and definition of included funds.
  Basis of accounting.
  Budgetary policies.
  Accounting policies for specific accounts.
  Fixed assets.
- Bond indenture provisions relating to accounting and reporting.
- Long-term debt provisions.
- Leases and other commitments.
- Provisions of public employee retirement systems, including costs, liabilities, unfunded obligations, actuarial assumptions, and most recent valuations.
- Contingencies.

(4) Supporting schedules to financial statements should be included to provide significant detail where necessary to further reflect the financial position or results of operations of the various funds (groups of funds) included in the information statement.

SECTION VI

Legal Matters

Describe any pending legal proceedings which may materially affect the issuer's or enterprise's ability to perform its obligations to the holders of the securities outstanding, including the effects of the legal proceedings on the securities outstanding and on the source of payment therefor. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings, and the relief sought. In appropriate cases, include or summarize, with the consent of counsel, an opinion of counsel as to the merits of the legal proceedings. Provide similar information as to legal proceedings which have been threatened to a degree which constitutes a material possibility that they will be instituted. An opinion of counsel with respect to such legal proceedings may, with the consent of counsel, be included or summarized in the information statement. State the name of such counsel.

SECTION VII
Miscellaneous

A. Ratings. If ratings for the securities outstanding have been received, state all ratings of the securities outstanding and the names of the rating agencies. If no ratings have been obtained or a rating has been refused for any such securities, a statement should be made to such effect. Changes in any ratings of any securities of the issuer during the preceding two years should be described.

It is suggested that the discussion indicate that (1) such ratings reflect only the views of such agencies and either set forth an explanation of such ratings as described by such agencies or refer the prospective purchaser to such agencies for an explanation of such ratings; (2) there is no assurance that such ratings will continue for any period of time or that they will not be revised or withdrawn; and (3) a revision or withdrawal of the ratings may have an effect on the market price of the securities.

B. Interest of Certain Persons Named in Information Statement. If any person named in the information statement as having prepared or certified an engineering report, feasibility study, or similar analysis included or referred to therein was employed for such purpose on a contingent basis, furnish a brief statement of the nature of such contingent basis. If any such person was or is connected with the issuer as an underwriter, financial advisor, security holder, member of the governing body, executive official, or employee, describe such connection.

SECTION VIII

Changes in Indebtedness

A. If the issuer has authorized additional indebtedness (other than tax or revenue anticipation indebtedness) since the last yearly information statement, (i) briefly describe the transaction(s) and state the classes* of securities or other indebtedness involved; the principal purpose(s) for which the indebtedness is authorized; and the amount authorized for each such principal purpose; and (ii) if the terms and conditions of such additional indebtedness affect the rights of holders of any outstanding securities, state the classes* of securities or other indebtedness involved, and as to each new class* of indebtedness containing terms and conditions affecting the rights of holders of any outstanding securities, give appropriate information as to such class* to enable investors to understand their rights. Reductions in indebtedness also should be described.

B. With respect to securities outstanding, if changes have occurred in matters of the nature suggested for reporting in any of the items set forth in the next paragraph, but the changes have been unreported pursuant to these Guidelines, (i) refer to the official statements or other instruments or documents describing the original information concerning the securities and (ii) describe the changes. If changes of such nature have occurred since the issuance of the securities, but have been reported previously pursuant to these Guidelines, refer to the previous yearly information statements, official statements or other instruments or documents describing (i) the original information concerning the securities and (ii) the subsequent changes. If no such changes have occurred, refer to the official statements or other instruments or documents describing

*For purposes of this Section VIII, a "class" of securities or other indebtedness is an issue or issues which differ from other issues as to security or other significant terms, other than interest rate, maturity or call provisions.

the original information concerning the securities. In all cases, where reference is made to yearly information statements, official statements or other instruments or documents, state the means by which copies or adequate summaries thereof may be obtained.

The items referred to in the preceding paragraph are as follows:

(1) Interest payment dates.

(2) Registration and exchange provisions.

(3) Trustee and paying agents.

(4) Redemption features, including sinking fund provisions.

(5) Maturity date.

(6) The pertinent provisions of the state constitution, statutes, resolutions and such other documentation that authorized the issuance of the securities.

(7) The principal purposes for which the net proceeds of the sale of the securities were authorized or proposed to be used and the approximate amount authorized or proposed for each purpose; any program of construction or addition of equipment to be financed from the proceeds of the sale of the securities; or the use or availability of material amounts of other funds to be used in conjunction with the proceeds of the sale, or the sources of any such other funds.

(8) Provisions with respect to the security and sources of payment for the securities; the priority of payment or lien of any outstanding securities or other obligations of the issuer; physical properties, assets or revenues securing the securities and the provisions for their release or substitution; guarantees or insurance of payment of the principal of or interest or premium on the securities or the financial condition or other appropriate information as to the guarantor or insurer; or any known claim of such guarantor or insurer which may be asserted as a defense in a suit on the guaranty or insurance.

(9) Provisions regarding (i) the flow of funds from enterprise revenues, including any restrictions thereon, (ii) the creation or maintenance of reserves, or (iii) maintenance or insurance of properties; investment of the proceeds or the reserves from the sale of securities; or parties who hold and control the proceeds of such securities and the method by which such proceeds are to be expended.

(10) Purposes for which additional debt may be issued, including provisions permitting or restricting the issuance of additional securities or the incurrence of additional debt; legal requirements, such as voter approval, which must be met in connection with debt issuance; or if there are revenue securities outstanding, the enterprise's authority to borrow funds for various purposes and the conditions under which the enterprise is empowered to issue varying types of indebtedness.

(11) The trustee or fiscal agent, if any; the rights and duties of the

trustee or fiscal agent; important conditions and the percentage of securities which would require the trustee or fiscal agent to take any action; any indemnification the trustee or fiscal agent may require before proceeding to enforce the rights of holders of the securities; any business relationship of the trustee or fiscal agent with the issuer as security holder, depositary or otherwise; or any capacity in which the trustee or fiscal agent acts as trustee or fiscal agent for the holders of other securities of the issuer.

(12) Pertinent provisions of the state constitution, statutes, or judicial decisions that could affect the status of or priority for the bondholder.

(13) The ability of any party to modify the terms of the securities, including provisions with respect to security or source of payment.

(14) Provisions in the securities outstanding, the indenture or other authorizing or governing instruments regarding specified events which constitute defaults and the remedies therefore under the securities; whether any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of such securities, indentures, or instruments; or the degree to which the issuer is subject to suit for failure to perform its obligations to the holders of the securities or is subject to the enforceability of judgments resulting from such suit.

[redacted]

[redacted]

SECTION IX

Information for Release Other Than on a Yearly Basis

A. Release should be made of each official statement for an offering of securities of the issuer containing information substantially more current than that contained either in the last official statement for an offering or in the last yearly information statement of the issuer or enterprise, whichever is the latest to be released pursuant to these Guidelines. The official statement should be prepared pursuant to the *Disclosure Guidelines for Offerings of Securities by State and Local Governments,* published by the Municipal Finance Officers Association. Financial statements regarding a fiscal year not covered in any such prior official statement or yearly information statement should be regarded as "substantially more current," as should other information materially differing from information previously reported. Release of each official statement pursuant to this paragraph should be made in the manner suggested in the Introduction to these Guidelines.

B. Release also should be made as promptly as possible of information concerning major developments about the issuer or enterprise, where such information has not been released previously pursuant to these Guidelines. Normally, information regarding the continuation of a prior trend in any area of information without a material change in the direction or rate of change of the trend, should be made pursuant to sections of these Guidelines other than this Section IX. However, information concerning any materially rapid change or the occurrence of any other event which can be expected to affect reasonable investment or trading decisions should be released in the manner suggested in the Introduction to these Guidelines. No fully comprehensive list can be prepared of the types of information which should be released under this Section IX. Some examples, however, of such information may include:

(1) The occurrence of a default in any outstanding indebtedness of the issuer, including a description of the indebtedness and creditors involved, the circumstances leading to the transaction, the relevant provisions of the authorizing and governing instruments or other documentation, and the amounts of principal and interest involved.

(2) The occurrence of a sudden change or disruption of an apparently long-term nature in services providing revenues which are material to the payment of outstanding securities.

(3) The issuance of additional indebtedness.

(4) A severe natural disaster or precipitous economic change materially affecting the issuer's economy.

(5) A change in a rating by a national rating agency of any outstanding securities of the issuer.

EXHIBIT 5

MUNICIPAL FINANCE OFFICERS ASSOCIATION,
DISCLOSURE GUIDELINES
FOR STATE AND LOCAL GOVERNMENT SECURITIES (1979)

Guidelines for Offerings of Securities

Municipal Finance Officers Association

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180 North Michigan Avenue
Chicago, Illinois 60601

Preface and Acknowledgements

During the past three years, the provision of information in municipal bond offerings has been a topic of much discussion. The Municipal Finance Officers Association (MFOA) anticipated this issue and, in 1974, began work under a National Science Foundation grant to study a variety of questions regarding provision of information by issuers of municipal securities, *i.e.*, states and local governments and their public agencies. One area of this project was designed to culminate in a set of disclosure guidelines. MFOA intended that these guidelines would provide protection to investors through improved disclosure and through greater standardization of disclosure practices. In November 1975, an exposure draft of *Disclosure Guidelines for Offerings of Securities by State and Local Governments* was released for public discussion and comment.

The draft Guidelines received wide dissemination, and there was strong interest in their improvement and ultimate market acceptance. During 1976 and 1977, MFOA sponsored a series of colloquia for discussion of the Guidelines and of a broad range of related issues. A digest was prepared of the many excellent written comments that were received. A Revision Drafting Committee, consisting of representatives of issuers, dealers, investors and professional groups, was appointed to review the comments and to revise the draft.

The members of the Revision Drafting Committee were as follows:

Donald J. Robinson, Chairman, Partner, Hawkins, Delafield & Wood, New York, New York
J. Chester Johnson, then Vice President, Morgan Guaranty Trust Company of New York, New York, New York
Richard Laird, Chief Accountant, Columbus, Ohio
Anthony M. Mandolini, Partner, Peat, Marwick, Mitchell & Co., Chicago, Illinois

David G. Ormsby, Partner, Cravath, Swaine & Moore, New York, New York
Staats M. Pellett, Vice President, Bessemer Trust Company, NA, New York, New York
William R. Snodgrass, Comptroller of the Treasury, State of Tennessee, Nashville, Tennessee
Peter C. Trent, Executive Vice President, Shearson Hayden Stone Inc., New York, New York
John M. Urie, Director of Finance, Kansas City, Missouri
John E. Petersen, then Washington Director, Municipal Finance Officers Association, Washington, D.C.
Robert W. Doty, then Associate Professor of Law, Creighton Law School, Omaha, Nebraska

The MFOA Committee on Governmental Debt and Fiscal Policy worked closely with this Revision Drafting Committee and with the MFOA Executive Board, which approved the Guidelines for release in December 1976.

Research on the effectiveness of the December 1976 Guidelines and the earlier exposure draft has demonstrated a consistent pattern of improvement in the information provided by municipal securities issuers. Initial research on this improvement was published in Petersen, Doty, Forbes & Bourque, "Searching for Standards: Disclosure in the Municipal Securities Market", 1976 Duke L.J. 1177 (1976). Preliminary indications from later research confirm continuation of the earlier trends.

With such importance being attached to the Guidelines, it is important for MFOA to perform the efforts necessary to improve the document on a continuous basis and to respond to changing conditions in the municipal securities market. Accordingly, a Disclosure Review Committee was appointed in January 1978 to update the Guidelines. The members of this Committee were:

Robert Odell, Chairman, City Treasurer, Los Angeles, California
Walter Knowles, Senior Vice President, Commerce Bank of Kansas City, Kansas City, Missouri
Edward Pendergast, Senior Investment Officer, St. Paul Companies, Inc., St. Paul, Minnesota
James W. Perkins, Partner, Palmer & Dodge, Boston, Massachusetts
William J. Reinhart, Special Assistant to the Comptroller of the Treasury, State of Tennessee, Nashville, Tennessee
William J. Reynolds, Town Comptroller, Greenwich, Connecticut

William R. Snodgrass, Comptroller of the Treasury, State of Tennessee, Nashville, Tennessee
Peter C. Trent, Executive Vice President and Manager, Municipal Bond Department, Shearson Hayden Stone Inc., New York, New York
Michael S. Zarin, Chief, Finance Division, Law Department, The Port Authority of New York and New Jersey, New York, New York
Robert W. Doty, then General Counsel, Municipal Finance Officers Association, Washington, D.C.

These revised Guidelines, which resulted from that process, were approved for release by the MFOA Executive Board following review by the Committee on Governmental Debt and Fiscal Policy. The Guidelines have been refined in a number of respects throughout the entire document based upon recent experience and comment. In general, this revision has been designed to facilitate the reading and comprehension of the Guidelines. Particular attention also has been paid to the areas of pension information and disclosure by state issuers.

The Guidelines are suggestions of information which may be disclosed in offerings of municipal securities. They are not intended to be legally binding. They represent information that generally should be included in official statements because it would be relevant to investors on most occasions for most issues.

These Guidelines represent an industry consensus on the provision of information. They will be subject to continued periodic review and updating as experience is gained in their use.

As noted, the MFOA Committee on Governmental Debt and Fiscal Policy has participated throughout the preparation of the original Guidelines and of these Guidelines, as well. The members of the Committee at the times of review were:

Joe E. Torrence, Chairman (1976), then Director of Finance, Metropolitan Government of Nashville and Davidson County, Nashville, Tennessee
Robert Odell, Chairman (1978), City Treasurer, Los Angeles, California
Grover N. Allen, member (1978), Director, Mississippi State Bond Advisory Division, Jeckson, Mississippi
Andre Blum, member (1976 and 1978), Director of Administration, Madison, Wisconsin
Herlan Boyles, member (1976), State Treasurer, Raleigh, North Carolina
Richard D. Clark, member (1978), Finance Director, City and County of Denver, Colorado

Dennis J. Date, member (1978), Finance Commissioner-Treasurer, London, Ontario

DavidL. Donahoe, member (1978), Treasurer, Pittsburgh, Pennsylvania

Daniet B. Goldberg, Counsel to the Committee (1976 and 1978), Of Counsel, Wood and Dawson, New York, New York

Harrison J. Goldin, member (1978), Comptroller, New York, New York

Carl V. Husby, Jr., member (1978), Director of Financial Management, Long Beach, California

Selden G. Kent, member (1978), Administrative Services Manager, Phoenix, Arizona

Lennox L. Moak, member (1976), then Director of Finance, Philadelphia, Pennsylvania

William J. Reynolds, member (1976 and 1978), Town Comptroller, Greenwich, Connecticut

Duane N. Scott, member (1978), Director, Ohio Municipal Advisory Council, Cleveland, Ohio

William R. Snodgrass, member (1978), Comptroller of the Treasury, State of Tennessee, Nashville, Tennessee

John M. Urie, member (1976 and 1978), Director of Finance, Kansas City, Missouri

John T. Walsh, member (1976 and 1978), Director of Finance, Hartford, Connecticut

James V. Young, member (1976), Collector-Treasurer, Boston, Massachusetts

Michael S. Zarin, member (1976 and 1978), Chief, Finance Division, Law Department, The Port Authority of New York and New Jersey, New York, New York

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In addition, we welcome the opportunity to note our appreciation of the time and energy the following groups contributed to the original project: American Bar Association, State and Local Government Accounting Committee of the American Institute of Certified Public Accountants, Dealer Bank Association, Public Securities Association, Securities Industry Association Public Finance Council, Association of the Bar of the City of New York, National Association of Counties, National Association of State Auditors, Comptrollers and Treasurers, National Conference of State Legislatures, National Governors' Association, National League of Cities, U.S. Conference of Mayors and the many other public interest, professional and governmental organizations which participated in the development of the Guidelines. MFOA particularly wishes to thank the National Science Foundation for funding which enabled this project to be executed (Grant No. APR 75-17227).

It is important to mention related projects of MFOA to improve the informational provision process:

(1) A set of *Guidelines for the Preparation of Yearly Information Statements and Other Current Information* to assist state and local governments in issuing yearly information statements and in providing other current information to securities holders, potential purchasers of securities in the secondary market, dealers, securities analysts and rating services;

(2) A set of *Procedural Statements in Connection with the Disclosure Guidelines for Offerings of Securities by State and Local Governments and the Guidelines for Use by State and Local Governments in the Preparation of Yearly Information Statements and Other Current Information* to speak to a number of specific questions regarding the informational provision process;

(3) A *Sample Official Statement* (in preparation) to assist issuers particularly of general obligation bonds respecting a format which has been found to be helpful by investors and analysts in comprehending information provided by issuers; and

(4) A Municipal Securities Information Document Central Repository to serve the functions of collecting and disseminating municipal securities information documents, such as final official statements, yearly information statements, annual reports and other information documents. Investors, dealers and other parties interested in receiving information already may obtain documents from the Repository regarding more than 1,000 municipal issuers.*

*The availability of information on a particular issue or issuer through the Repository is expected to benefit that issue or issuer materially through increased dissemination of information. Documents may be submitted to the Repository at no charge by sending one copy to MFOA at 1750 K Street, N.W., Suite 650, Washington, D.C. 20006. Microfiche copies of most documents in the Repository will be made by Disclosure, Incorporated, of Bethesda, Maryland, and sold as a part of its Municipal Securities Information Document Library. Issuers contributing *final* documents to the Repository may receive one microfiche copy of their documents which are copied, subject to their agreement not to reproduce or publish any such microfiche for resale, in whole or in part, in microform, paper form or otherwise. MFOA active members and associate members may purchase microfiche copies of documents in the Repository at discounts of 10% and 3%, respectively, from the normal prices as of the date of acceptance of the order.

These Guidelines, the related documents and the Municipal Securities Information Document Central Repository are extremely significant developments in the municipal securities market. Only three years ago, some doubted that an entire industry could respond so effectively to the crucial issue of disclosure or that it could solve the difficult and complex problems related to that issue. Governmental issuers, investors, dealers, counsel, accountants and financial advisors deserve only the highest degree of praise for their concern and cooperation on these matters.

Donald W. Beatty
Executive Director
Municipal Finance
Officers Association

Table of Contents

Introduction

These Guidelines are designed for use in providing information to investors in connection with offerings of securities of state and local governments. In most cases, such information is provided to investors by state and local governments through investment dealers and dealer banks that purchase securities for reoffering. The information suggested in these Guidelines is intended to produce an official statement which will be acceptable for such purpose. It is not intended, however, to create disclosure requirements or a legal obligation to provide any or all items of information that are suggested.

These Guidelines suggest material which an investor might consider of importance in making an informed investment decision and which generally is available in financial reports, budget documents and other data accessible to the issuer. Information in the issuer's records or which can be obtained from another source, such as U.S. Government census reports, normally should be obtained, compiled and reported. There should be an appropriate indication of the source of the information, if the source is other than the issuer.

It is possible that other information, not suggested herein, may at times be material and in such cases should be provided. Certain types of issuers or circumstances might require additional information in order to give an adequate description of such issuers or circumstances. There may also be cases in which some of the suggested information is unnecessary or irrelevant. For instance, matters bearing principally on the long-term prospects of the issuer, such as demographic or economic data, may not be material in the sale of certain revenue or tax anticipation short-term obligations secured by and payable solely from anticipated revenues or taxes. The overriding consideration is to provide a complete, accurate and objective description of those factors that relate to the securities being offered and that are necessary to make an informed investment decision.

The order of presentation suggested in these Guidelines should not be deemed to recommend a specific order of presentation of information in the official statement. MFOA is preparing a Sample Official Statement to indicate a format which has been found helpful for official statements, and it is suggested that issuers consider that format. The information set forth in the official statement should be presented in a concise, understandable fashion. Consideration should be given to setting forth material in a manner which will give appropriate emphasis to such material in view of its relative importance.

The financial statements suggested in these Guidelines are included in the comprehensive annual financial reports called for in *Governmental Accounting, Auditing, and Financial Reporting,* issued by the National Council on Governmental Accounting (NCGA). The NCGA is developing the concept of general purpose financial statements. The data suggested in these Guidelines may be combined with or extracted from any such general purpose financial statements, as well. Such an approach could achieve a unity of the official statements, comprehensive annual financial reports, yearly information statements and general purpose financial statements.

The issuer may desire to consider reliance upon a two-part official statement, one part of which contains only offering data which may be detached so that the second part may constitute a yearly information statement. Conversely, yearly information statements may serve as official statements upon the attachment of a part including offering information. By such means, issuers may avoid the preparation of multiple documents where information remains reasonably stable during the fiscal year.

Some sections of these Guidelines are more appropriate for offerings of general obligation securities, while other sections are more appropriate for offerings of revenue securities or of special obligation securities. In some cases, a particular security may combine characteristics of a general obligation security, a revenue security or a special obligation security. For example, revenue sources from an enterprise or enterprises* or a specific tax may be the primary source of payment and security for an issue of bonds, while additional security is furnished by the general taxing power of the issuer. Under these circumstances, consideration should be given to providing the appropriate information

*As used in these Guidelines, "enterprise" means any undertaking or activity relating to the construction, acquisition, operation or maintenance of facilities or services or otherwise performing governmental functions which are expected to generate revenues which are to be a material source of payment for the principal of and interest or premium on the securities.

suggested as to both types of securities. These Guidelines are not appropriate for information in official statements for offerings of obligations issued for the purpose of providing pollution control or industrial facilities where the payment of the securities is solely dependent upon payment by the private entity involved in the offering.

Provision should be made to assure the availability of the official statement to prospective purchasers of the securities. In private placements, including direct placements to a limited number of institutional investors, the procedures may be determined by negotiations between the issuer, the dealer, if any, and the investors. In such offerings, the investors should have access to all material information, whether through a formal official statement or otherwise, and the investors should be able to execute a certificate to the issuer to the effect that, assuming that the issuer has responded fully and accurately to investor requests, the investors have had access to such information as they have requested and they desire no further information.

In addition, official statements released shortly before the sale of bond issues become outdated. Investors and dealers in the secondary market need current information on which to base decisions. Rating services also need current information. The information suggested in the MFOA *Guidelines for the Preparation of Yearly Information Statements and Other Current Information* is intended to assist in the production of documents which will be acceptable in the satisfaction of those needs. It is suggested that reference be made to those Guidelines as well.

These Guidelines are not intended to establish standards of legal sufficiency. No implication is intended that previously prepared documents have been inadequate or that any offering document prepared in the future is inadequate solely because it does not comply with suggestions in these Guidelines. It should be emphasized that those preparing the official statements should take great care to see that they are accurate, complete and not misleading. Responsibilities of the various participants with respect to the development of information in the official statement should be described in the official statement. Where appropriate, the various participants or attesting officials should consider the necessity of certifying to the accuracy and completeness of the material they have prepared.

SECTION I

Cover Page of the Official Statement

A cover page is sometimes used to describe certain details of the securities being offered. In these instances, the details which may be set forth include the following:

(1) The total principal amount of the securities.
(2) The name of the issuer (with appropriate identification).
(3) The type or title of issue being offered (*e.g.*, general obligation, water revenue, *etc.*).
(4) The date of the obligations, interest payment dates and the date from which interest is paid.
(5) The denominations in which the securities are being offered.
(6) Registration and exchange provisions.
(7) Trustee and paying agents.
(8) Redemption features, if any, including sinking fund provisions.
(9) Maturity date and principal amount by maturity in columnar form.*
(10) A statement of the tax status of interest on the securities being offered.

*In the reoffering, interest rates, yields or prices should be specified. In the case of a public sale, it is suggested the issuer provide space for such interest rates and reoffering yields or prices. See MFOA Procedural Statements Nos. 3 and 4.

Additional information sometimes set forth on the cover page includes:

(11) Ratings by the various rating agencies (see "Miscellaneous").
(12) Designation as a new issue.
(13) Brief statement of the authority for issuance.
(14) Anticipated date and place of delivery.
(15) Summary statement of the security or source of payment.

It is suggested further that there be stated the name, address and phone number of the issuer official(s) who can answer questions about data disclosed in the official statement or who can direct inquiries to the appropriate responsible parties. Of course, all material information should be contained in an official statement, and no one should be given access to data which will not be made available generally to others upon request. If additional material information is obtained, the official statement should be supplemented or amended.

On the inside front cover or on the back cover of the official statement, a Table of Contents should appear to indicate in reasonable detail the pages on which particular types of information may be found.

It is suggested that issuers consider maintaining a mailing list of all parties who wish to receive information furnished by the issuers (such as official statements, yearly information statements and other information) and that issuers consider inserting an appropriate notice (in a form which would not constitute a contractual commitment) in official statements regarding the maintenance of the mailing list. Such a notice may be placed on the inside front cover or on the back cover of the official statement.

Issuers which submit their final official statements, yearly information statements, annual reports and other information documents to the MFOA Municipal Securities Information Document Central Repository may consider a statement on the cover of the official statement regarding that fact and regarding the availability of copies of those documents through the Repository.

SECTION II

Summary of the Official Statement

The purpose of the summary of the official statement is to set forth, in brief form, the salient portions of information with respect to the identification of the issuer; the purposes for which the securities are being issued; and the security and source of payment for the securities. In addition, special circumstances that are of importance to the making of an informed investment decision and their possible consequences for investment risk should be described. The issuer should be briefly described as well as the project which is to be undertaken. Appropriate references to more detailed information contained elsewhere in the official statement should be included.

SECTION III

Securities Being Offered

Provide the following information to the extent relevant regarding the securities being offered and regarding the authorizing and governing instruments:

A. Amplification of items 1-9 that appear on the cover page should be presented, where appropriate. In any case, set forth such items where they do not appear on the cover page.

B. Describe the pertinent provisions of the state constitution, statutes, resolutions and such other documentation that authorize the issuance of the securities.

C. State the principal purposes for which the net proceeds of the offering are authorized or proposed to be used and the approximate amount authorized or proposed for each purpose. Furnish a brief description of any program of construction or addition of equipment to be financed from the proceeds of the sale of the securities. If more funds are needed to accomplish the stated purposes, indicate the projected amounts and sources of such funds. State whether such other funds will be definitely available upon completion of the offering, and if not, describe the conditions which must first be satisfied. If the proceeds may be used for other purposes, describe the other purposes and amounts which may be used. If 15% or more of the proceeds has not been allocated for particular purposes, a statement indicating the amount of such unallocated proceeds should be given. If the aggregate expenses of the offering to be paid by the issuer, other than underwriting commissions, are 5% or more of the net proceeds of the offering, state the aggregate amount of all such expenses in connection with the issuance and distribution of the securities. It is understood that total fees customarily are significantly below this amount.

D. Describe provisions with respect to the security and sources of payment for the securities. State the relationship of the priority of payment or lien to any outstanding securities or other obligations of the issuer. If the securities are secured by physical properties, assets or revenues, such physical properties, assets or revenues and the provisions for their release or substitution should be described. If payment of the principal of or interest or premium on the securities being offered is guaranteed or insured in any respect, name the guarantor or insurer, state the terms and conditions of the guaranty or insurance and furnish such financial and other information as to the guarantor or insurer as may be appropriate. Describe any known claim of the guarantor or insurer which may be asserted as a defense in a suit on the guaranty or insurance.

E. Describe redemption features of the securities, including provisions relating to redemption prior to maturity or to sinking and other related funds.

F. Describe provisions regarding (1) the flow of funds from enterprise revenues, including any restrictions thereon, (2) the creation or maintenance of reserves, and (3) maintenance or insurance of properties. Describe any proposed investment of the proceeds or the reserves. Describe the parties who will hold and control the proceeds of the securities and the method by which such proceeds will be expended.

G. Describe the purposes for which additional debt may be issued, including provisions permitting or restricting the issuance of additional securities or the incurrence of additional debt. Describe legal requirements, such as voter approval, which must be met in connection with debt issuance. In offerings of revenue securities, describe the enterprise's authority to borrow funds for various purposes and the conditions under which the enterprise is empowered to issue varying types of indebtedness.

H. State the name of the trustee or fiscal agent, if any; summarize the rights and duties of the trustee or fiscal agent; and state the important conditions and the percentage of securities which would require the trustee or fiscal agent to take any action. Describe any indemnification the trustee or fiscal agent may require before proceeding to enforce the rights of holders of the securities. Indicate any business relationship of the trustee or fiscal agent with the issuer as security holder, depositary or otherwise. If the trustee or fiscal agent acts in the capacity of trustee or fiscal agent for the holders of other securities of the issuer, discuss such relationship or capacity.

I. Describe pertinent provisions of the state constitution, statutes or judicial decisions that could affect the status of or priority for the bondholder.

J. State whether the terms of the securities, including provisions with respect to security or source of payment, may be modified and, if so, under what circumstances.

K. Summarize provisions in the securities being offered, the indenture or other authorizing or governing instruments regarding specified events which constitute defaults and the remedies therefor under the securities and whether any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of such securities, indentures or instruments. If the issuer cannot be sued for failure to perform its obligations to the holders of the securities or if judgments resulting from such suit are not enforceable against the issuer, such facts should be stated.

SECTION IV

Description of Issuer and Enterprise

A. Issuer. The information suggested herein would normally apply to offerings of general obligation securities which are payable from ad valorem taxation or other taxes.

Data should be given to provide sufficient background and general information regarding the issuer. Investors should be informed of factors which indicate the ability of the issuer to impose and collect, and the ability of its citizens to pay, taxes and other receipts which can be used to discharge the issuer's obligations. The information presented herein would normally include the issuer's range and level of services and the capacity of the issuer to provide such services. In addition, under most circumstances, a discussion of important population, economic and educational data should also be presented.

Examples of the types of information which may be appropriate are:

(1) A statement indicating the year in which the issuer was established; the name of the state or other jurisdiction under the laws of which it was established; the form of government, such as mayor-council or city manager; the important powers and the governmental organization of the issuer; and relationships to and areas of shared responsibilities with other governmental entities.

(2) A list of the executive officials of the issuer. Discuss the manner in which the principal officials of the issuer are chosen, their respective terms, and the authority and method by which policy and program decisions are made.

(3) A brief description of (a) the principal governmental services performed by the issuer; (b) services which the issuer is required to perform; (c) the revenue sources for the services, and the degree of self-support of any service activity, described pursuant to (a) and (b); (d) the

extent to which similar or differing governmental services are performed by or performed in conjunction with other governmental entities; and (e) any recent major changes or interruptions in such services.

(4) A discussion of the general character of the principal facilities of the issuer. The material should allow the investor to appraise the ability of the issuer's principal facilities to continue to provide issuer services. Describe the capital improvements plan which indicates future construction requirements of the issuer and the currently projected methods of financing such expenditures.

(5) A statement or description of historical and current data concerning and estimates of the issuer's population, per capita income, median age, education levels, school enrollment and unemployment rate.

(6) A statement or description of historical and current data concerning commercial and residential construction, commercial and savings bank deposits, property valuation and values in housing stock.

(7) A statement or description of historical and current data concerning (a) the principal industries, commercial and governmental entities, and other employers in the issuer's immediate geographical area; (b) the number of persons employed by such industries, entities or employers; (c) the economic stability of such industries, entities or employers; and (d) the economic effects of any recent addition or loss of major industrial, commercial or governmental entities, or other employers.

For state government issuers, a presentation of the state gross product by sectors (*e.g.*, manufacturing, construction, mining, trade, services, *etc.*) and a discussion of historical and current data concerning the economic stability of such sectors may be substituted for the matters suggested in paragraphs (6) and (7) above.

(8) The number of persons presently employed and the percentage of employees of the issuer who belong to unions or other collective bargaining groups. If the total number of employees has changed by more than 15% within the previous three years, describe the change and the reasons therefor. Characterize employee relations.

B. Enterprise. The following information normally should be provided in offerings of revenue securities which are secured from the earnings of an enterprise. However, to the extent that the sources of revenues to pay debt service on the securities are dependent on the viability of a service area, certain material suggested in the preceding section should be set forth. Generally in the case of securities which are paid from a multiplicity of similar facilities or sources, such as obligations of a state housing authority or a student loan authority, the information suggested in this section is not necessary regarding each such facility or source on an individual basis.

(1) State the year in which the enterprise was organized, its form of organization (such as "a corporation," "an unincorporated association," "a department of the issuer" or other appropriate statement) and the name of the state or other jurisdiction under the laws of which it was organized. Name the municipalities, counties and states in which the enterprise is located and describe the service area.

(2) List the executive officials of the enterprise. Discuss the manner in which the executive officials of the enterprise are chosen, their employment over the past five years, their respective terms, and the authority and method by which policy and program decisions are made.

(3) Describe the location and general character of the principal facilities of the enterprise. If any property is leased or otherwise not held in fee or is held subject to any major encumbrance, discuss briefly the important factors in this regard. Provide sufficient information so that an investor may be able to appraise the ability of the enterprise to continue to provide its services. Such information should be furnished that will inform investors of the extent of utilization and the productive capacity of the enterprise's facilities. Itemization and detailed description of the facilities generally need not be given. Describe the future construction requirements of the enterprise and the currently projected methods of financing such expenditures.

(4) If the proceeds of the offering will be used for the construction of all or part of the enterprise, briefly describe the new facilities, including their proposed purposes, productive capacity, anticipated life and nature of construction. State the dates proposed for the commencement and completion of the construction; the dates proposed for the commencement of operations in the new facilities; the amount and location of the land on which the facilities are to be located; and the rights of the issuer or the enterprise in relation to the land, such as whether the land is held in fee, is leased, is held subject to encumbrances, or must be condemned or otherwise acquired before use. The construction arrangements and principal contractors, engineers or other parties participating in the construction also may be of interest.

(5) If the proceeds of the offering will be used for construction of all or part of the enterprise, reference should be made to any relevant engineer's or financial feasibility reports or studies on the feasibility of such construction as a part of the enterprise's operations. Name the parties preparing the reports or studies and whether the consent of such parties to the reference to such reports or studies has been obtained. Reference should also be made to any other reports or studies which may have a bearing on the conclusion of feasibility. All references should describe the material conclusions of the reports or studies, insofar as such conclu-

sions relate to the use of proceeds as set forth in the official statement. If no such report or study has been made, a statement should be made to that effect.

(6) Describe the operations performed and intended to be performed by any new or existing enterprise and the general development of such operations during the past five years, or such shorter period as the enterprise may have been engaged in operations. The description should include, but not be limited to, information as to matters such as the following areas (if the enterprise is engaged or will engage in more than one activity, provide appropriate documentation and description for each of the principal activities):

(a) The principal services rendered or to be rendered by the enterprise, and the principal users of, or service area for, including any reliance on seasonal factors related to, such services. Describe recent significant changes in the kinds of services rendered, or in the users or area served.

(b) Whether the enterprise has or will have an exclusive position in its service area, and if not, a description of the competitive conditions in the service area and the present and proposed competitive position of the enterprise, if known or reasonably available to the issuer.

(c) The numbers of customers of the enterprise at present and as proposed after the completion of construction into categories according to major sources of revenues, and an appropriate categorization of ranges reflecting amounts paid or to be paid by customers for the enterprise's services. If an important part of the operations is or will be dependent upon a single customer or a few customers, the loss of any one or more of whom would have an adverse effect on the operations or financial condition of the enterprise, give the names of the customers, their relationship, if any, to the enterprise, and significant facts regarding their contribution to the operations of the enterprise. Describe also any federal, state or local governmental program which provides an important part of the enterprise's revenues.

(d) The parties responsible for determining and modifying rates, together with related limitations on the powers of such parties and rights of review of the enterprise or others; and any rate covenant or similar agreement on the part of the issuer or the enterprise, and the degree to which such covenant or agreement is designed to provide for debt service, and operating and any other important expenses.

(e) The sources and availability of raw materials essential to the enterprise's present and proposed operations.

(f) The status of licenses, permits and franchises required to be held by the enterprise. Describe any federal, state or local governmental regulation of the operations of the enterprise, including significant environmental protection requirements, and the effects of such regulation on the enterprise's present and proposed operations and on new construction.

(g) The numbers of persons presently employed and to be employed after completion of construction, and the percentage of employees of the enterprise who belong to unions or other collective bargaining groups. Characterize employee relations.

(h) If the enterprise has not received revenues from operations for the entire fiscal year prior to the date of the sale of the securities being offered, provide an analysis of the enterprise's current year's plan of operations, including a description of any results that may have been experienced at the time of the offering and a discussion of known factors and important assumptions related to operations for the next fiscal year. If such information is not available, the reasons for its not being available should be stated. Information relating to any plan should include such matters as:

(i) A statement in narrative form indicating the enterprise's plan of construction. The schedule for completion and categories of expenditures and sources of cash resources should be identified.

(ii) Any anticipated large acquisition of plant and equipment and the capacity thereof.

(iii) Other matters which may be important to the enterprise's construction and operations.

SECTION V

Debt Structure

The following suggested information is intended to describe various important factors related to the debt structure of the issuer or enterprise, including authority to incur debt, debt trends, the size of prospective debt burden, and rates of retirement. The tax related information is suggested for general obligation securities. Sufficient information should be provided by the issuer or enterprise so that an investor will be able to evaluate tax and other revenue sources in relation to the obligations or commitments of the issuer or enterprise.

A. Furnish the information of the type suggested by the following table as to appropriate categories of long-term and short-term securities and other indebtedness of the issuer or enterprise:

Category of indebtedness	Amount authorized	Amount outstanding as of [date] (less sinking fund installments paid to such date)	Amount to be outstanding
	$	$	$

The "appropriate" categories of indebtedness will vary from issuer to issuer and from enterprise to enterprise. Generally, the purpose or form of the indebtedness may be used as a basis for categorization. The information furnished should also include a separate description of other commitments, such as long-term leases, lease-purchase obligations, installment purchase obligations, guaranteed debt, "moral obligation" indebtedness, and other forms of contingency or "off balance sheet" indebtedness.

Debt should be regarded as "authorized" when all legal steps have been taken by the issuer for its authorization for issuance, such as required approval by the governing body or the voters. However, actions requiring only minor administrative performance normally should not be regarded as a stage for the authorization of debt.

The amount of indebtedness outstanding should be as of the latest practicable date, within the previous 120 days, with any major changes in debt position, including any new obligations issued during the interim, appropriately indicated. In stating the amount to be outstanding, give effect to the securities being offered, including the retirement of outstanding debt with proceeds of such securities, and in addition, give effect to required or permitted debt retirement from existing resources.

B. Furnish a debt service schedule of the outstanding indebtedness of the issuer or enterprise, including required payments of principal and interest, and where appropriate, authorized indebtedness to the final maturity date of all outstanding securities. Debt payable from different tax or revenue sources should be shown in separate columns as well as in the "Total" column. Include in the schedule debt service on the securities being offered. Indicate in footnotes to the schedule any assumptions, such as interest rates on authorized but unissued debt, on which information in the schedule is based. The schedule may be presented in substantially the following tabular form:

Fiscal year ending [date]	Principal	Interest	Total
19__	$	$	$
19__			$
19__			$
.			.
.			.
.			.
(year)			$

C. Furnish the information called for by the following table as to indebtedness of overlapping governmental entities. The information should be as of the latest practicable date, within the previous 120 days, with any major changes in debt position during the interim appropriately indicated. Unless inappropriate, the information in the last column should be based upon the estimated true valuation of real property in the respective jurisdictions.

Name of overlapping entity	Amount of authorized debt	Amount of outstanding debt (less sinking fund as of [date])	Percent of outstanding debt chargeable to persons or property in issuer's boundaries (1)
	$	$	%

(1) Based upon estimated true valuation of real property in the respective jurisdictions.

D. Give information as of the end of each of the issuer's last five fiscal years with respect to the issuer's (1) debt per capita; (2) debt expressed as a percentage of total assessed valuation of taxable real and personal property; (3) debt expressed as a percentage of total estimated true valuation of taxable real property; and (4) debt per capita expressed as percentage of estimated per capita income of individual taxpayers residing in the jurisdiction.

E. State the amounts of long-term and short-term indebtedness of the issuer or enterprise outstanding as of the end of each of its last five fiscal years.

F. Describe any legal debt or tax limit of the issuer or enterprise, the legal source of the limit, the indebtedness or tax rates chargeable to the limit, and the unused borrowing or taxation margin.

G. If any securities of the issuer have been in default as to principal or interest payments or in any other material respect at any time in the last 25 years, state the circumstances giving rise to such default, including descriptions of the relevant provisions of the securities and authorizing and governing instruments and the amounts involved. State whether such default has been terminated or waived, and if so, the manner of such termination or waiver.

SECTION VI

Financial Information

The suggested information that follows is intended to indicate important factors related to the financial condition and results of operations of the issuer or enterprise. The section is divided into two parts: first, there is suggested information that would summarize the financial practices and recent results of operations of the issuer or enterprise; the second part sets forth the information to be presented as the financial statements of the issuer or enterprise for the last two fiscal years.

A. General Description of Financial Practices and Recent Results of Operations:

(1) Furnish in comparative columnar form a summary of operations for the fund/account groups which would provide information pertinent to the securities being offered. Such information should be provided for each of the last five fiscal years and, in the case of enterprises and in those unusual circumstances where it is otherwise appropriate, for the latest practicable date for interim periods of the current and prior fiscal year if the official statement is dated more than 120 days after the last fiscal year.

Information regarding the operations of enterprise and intragovernmental (internal) service funds should be presented separately from information regarding the operations of the general and other funds of the governmental entity.

(a) Information regarding operations of the general and other fund/account groups may be presented on a combined basis as appropriate. Such summary should include major categories of actual revenues and expenditures and comparable budgeted amounts.

In addition, beginning and ending fund balances and transactions reported as adjustments to fund balances should be included.

(b) Subject to appropriate variation to conform to the nature of the operations of an enterprise or intragovernmental (internal) service fund, the summary and discussion should include: operating revenues; operating expenses; interest expense; income from continuing operations; income from discontinued operations; extraordinary items; the cumulative effects of changes in accounting principles; and net income or loss. The summary should also include the amount of any changes in retained earnings, other than net income or loss, and the amount of retained earnings at the end of each of the fiscal periods presented.

(c) Following each summary of operations, include a discussion of the material trends and changes and the reasons therefor related to the components of such summary. For example, if debt service, as a percentage of total expenditures, has increased significantly in recent years, describe the conditions which contributed to the trend. Furthermore, if certain revenues or expenditures are dependent on the financial policies or practices of another governmental entity, state the amounts involved and describe the relationship of such other entity to such issuer or enterprise. In addition, such discussion should include the effect of a change in accounting principles or procedures during any of the years presented.

(d) Describe any known facts which would significantly affect any financial information presented or the future financial operations of the issuer or enterprise.

(2) Describe generally the accounting practices of the issuer or enterprise. Indicate any important deviations (and the effects thereof, if quantifiable) from generally accepted governmental accounting principles, as presented and recommended in the National Council on Governmental Accounting (formerly National Committee on Governmental Accounting) publication, *Governmental Accounting, Auditing, and Financial Reporting* and the Industry Audit Guide of the American Institute of Certified Public Accountants, entitled *Audits of State and Local Governmental Units,* as such generally accepted governmental accounting principles are supplemented and modified from time to time. The information recommended herein may be cross-referenced to the notes to the financial statements.

(3) Describe the issuer's or enterprise's budgetary processes. The description should include matters such as: the parties responsible for the development of operating and capital budgets; the processes by which the budgets are approved and adopted; legal requirements for balancing such budgets and institutional mechanisms to assure achievement of that goal. Summarize the pertinent current operating and capital budgets. State whether the issuer or enterprise has conformed to such budg-

ets to date, and if not, the significant variations which have occurred or are expected to occur. Describe the reasons for any material differences between the budgets and the actual financial results for the last five fiscal years and the current fiscal year.

(4) If the securities being offered are payable only from particular revenues of the issuer, such as a particular tax or assessment, describe the revenues and give sufficient historical and other data to indicate the reliability of such revenues to meet debt service on the securities.

(5) If the obligations are secured in whole or in part by taxes of any type, describe briefly the manner in which such taxes are levied and collected. Where appropriate, describe briefly the manner in which property valuations and assessments are determined. Include descriptions of (a) the manner in which delinquent taxes are collected and the result of such collection efforts; (b) the interest and penalty charged on delinquent taxes; (c) important changes during the last five years in tax assessment, levy or collection practices; and (d) the reasons for such changes. State the value of total tax title liens owned by the issuer as of the end of each of its last five years and as of a recent date. Describe briefly the procedures followed in foreclosure. Describe the priority of tax claims of the issuer over other indebtedness of taxpayers.

(6) Give in tabular or other appropriate form with respect to the issuer, as of the end of each of its last five fiscal years and as of a recent date, information as to (a) its assessed valuation of taxable real property; (b) its estimated true valuation of taxable real property; (c) its assessed valuation of taxable personal property; and (d) the assessed valuation of taxable real property expressed as a percentage of the estimated true valuation thereof. Segregate such information as to industrial, commercial, utility and residential properties. For state government issuers, a presentation of the information suggested in paragraph (7) below may be substituted for the matters suggested in clauses (a) through (d) above or may be presented as additional information, where appropriate. State in tabular or other appropriate form the total tax levy and the accumulated amount of delinquent taxes as of the end of each of the issuer's last five fiscal years and the tax delinquency rate for each of such fiscal years and for the current fiscal year to date. Describe recent borrowing against such delinquent taxes and any anticipation of collection of delinquent taxes in budgets for current or future years. State the accounting policies applied in writing off delinquent taxes.

(7) Where any tax or revenue source, including any intergovernmental aid program, other than property taxes exceeds 10% of the aggregate of the issuer's tax and revenue sources in the issuer's most recent fiscal year, or where all such tax or revenue sources other than property taxes exceed 15% of such aggregate, give in tabular or other appropriate form

with respect to the issuer, as of the end of each of its last five fiscal years, the amount received from each such tax or revenue source exceeding 10%, and all such tax or revenue sources, respectively, and of the volume of activity generating such funds (*e.g.*, personal income, gross sales and gross product). Where intergovernmental aid programs as a whole provide more than 10% of the issuer's tax and revenue sources in its most recent fiscal year, name and describe the principal programs and state whether such programs are of short-term or long-term duration. In all other cases, for taxes and other revenue sources (other than property taxes), including intergovernmental aid programs, include descriptions of the significance thereof to the issuer and recent volume of activity generating such funds.

(8) A table setting forth the ten largest taxpayers of the issuer, where appropriate and not prohibited by law, should be presented. Taxpayers paying less than 5% of the total tax levy may be omitted. State the amount of taxes paid by each such taxpayer, the percentage of the total tax levy or tax collections represented by such amount, and in the case of property tax levies, the assessed valuation of taxable real property of each such taxpayer.

(9) With respect to interim borrowing for operational purposes, such as revenue anticipation notes or tax anticipation notes, present the appropriate anticipated cash flow.

(10) If the proceeds from the sale of any securities (other than revenue or tax anticipation short-term obligations secured by and payable solely from anticipated revenues or taxes) or any nonrecurring revenues have been used for current operating expenses at any time in the last ten years, describe the circumstances giving rise to such use, including the amount used in each of such years.

(11) If payments on outstanding securities or other obligations have been met through loans from other governmental fund sources, indicate the sources, the amounts involved, the purpose (as for payment of principal, interest or operating cost) and any commitments for repayment of the loans.

Describe briefly any federal, state or other legislation, program or procedure which would apply specifically to the issuer in times of financial emergency.

(12) Describe briefly the significant characteristics of the issuer's or enterprise's public employee retirement systems or other pension plans. These characteristics may include items such as the following:

(a) Whether the plans are single employer plans or part of a statewide or other multi-employer system.

(b) A brief description of legal obligations of the issuer to finance benefits.

(c) Number and type of active and retired employees covered in the plans (*e.g.*, all employees, police, fire officials or teachers).

(d) Basis of financing (*e.g.*, member and employer contributions and investment income).

(e) The actuarial or other method used to compute required contributions and a summary of required contributions for the most recent five-year period, which may be presented in the following format:

Contributions in Relation to Covered Employee Payroll

	Fiscal Years Ended				
	19xx	19xx	19xx	19xx	19xx
Number of covered employees					
Employer contribution rate	%	%	%	%	%
Actual employer contributions	$	$	$	$	$

(f) State historical or current data concerning adverse trends or factors in the financing or operation of the pension plans as they relate to the employer's contributions or liabilities to the plans. Information concerning the plans contained in the financial statements included in the official statement should be cross-referenced.

For governmental units which have single employer plans, provide the following additional information:

(g) Actuarial valuations:
- (i) Frequency.
- (ii) Date of latest valuation.
- (iii) Actuarial method used.
- (iv) A summary of the major assumptions used, *e.g.*,
  - *(a)* Investment return.
  - *(b)* Salary increases.
  - *(c)* Age and service retirement.
  - *(d)* Benefit changes after retirement.
  - *(e)* Withdrawal from employment.
  - *(f)* Death before and after retirement.
  - *(g)* Disability retirement.
  - *(h)* Other major assumptions.

(v) Treatment of actuarial gains and losses.
(vi) Basis of asset valuation.
(vii) Amount of and period of financing unfunded accrued liabilities (if any) and the ratios of

(a) actual employer contributions (not including contributions to finance unfunded accrued liabilities), and
(b) employer contributions to finance unfunded accrued liabilities to covered employee payroll.

Liabilities and costs pertaining to other employee benefits such as vacation and sick leave may be material. When that is the case such liabilities and pertinent details should likewise be discussed.

B. Financial Statements

Uniformity in the presentation of financial information and the consistent application of accounting principles are essential for adequate financial reporting. To that end, financial statements should be prepared and presented in conformity with generally accepted governmental accounting principles, as modified from time to time,[1] and should be audited in accordance with generally accepted governmental auditing standards.[2]

If financial statements are prepared in conformity with laws applicable to the issuer and their presentation does not conform with generally accepted governmental accounting principles, the material differences between such laws and generally accepted accounting principles should be discussed and, if practicable, the effects of such differences should be stated. Financial statements should be audited by an independent governmental audit organization, an independent certified public accountant or an independent licensed public accountant. If such an audit is not in accordance with generally accepted governmental auditing standards, the nature of the audit and how it differs from such standards should be discussed.

[1]As contained in the following authoritative sources: *Governmental Accounting, Auditing, and Financial Reporting* (1968) issued by the National Council on Governmental Accounting (NCGA); *Audits of State and Local Governmental Units* (1974) published by the American Institute of Certified Public Accountants (AICPA); other pronouncements of the NCGA and AICPA; and pronouncements of the Financial Accounting Standards Board.

[2]As contained in the *Statements on Auditing Standards* published by the American Institute of Certified Public Accountants; and in *Standards for Audit of Governmental Organizations, Programs, Activities & Functions* (1972) published by the U.S. General Accounting Office and *Audits of State and Local Governmental Units* (1974) published by the American Institute of Certified Public Accountants.

Consent of the certified public accountant or other independent auditor should be sought if the name of the independent auditor is used in any way in connection with the financial statements or financial data included in the official statement. If such consent is not obtained, such fact and the reasons therefor should be discussed.

The financial statements should be included in the official statement for those funds and account groups which would provide information pertinent to the securities being offered. The information would normally include financial statements for those funds which will provide the resources to discharge the issuer's obligations to the holders of the securities being offered and for other funds or account groups which would provide information material to such funds. In all cases, if some fund other than the fund with the primary obligation either requires substantial financing from or furnishes substantial financing for the fund with the primary obligation, financial statements for the other fund should be included. Generally, the financial statements of an issuer or enterprise will appear at the end of the official statement.

The financial statements for each fund and account group included in the official statement should be presented for two years and should include all basic financial statements. Depending upon applicability to the respective funds, the basic financial statements would include balance sheets, statements of revenues and expenditures, statements of changes in fund balance, statements of income, statements of changes in retained earnings and statements of changes in financial position.

Reference should be made to the Introduction to these Guidelines for a discussion of the relationship between these Guidelines and *Governmental Accounting, Auditing, and Financial Reporting,* issued by the National Council on Governmental Accounting.

(1) *General Obligation Debt.* Normally, when general obligation debt is being offered, financial statements should be included for the general fund, special revenue funds which provide revenues to pay a substantial portion of the total expenditures of the issuer and which relate to major governmental functions, debt service funds and general long-term debt group of accounts. In addition, if an enterprise or other fund either requires substantial financing from the funds relevant to the securities being offered or furnishes substantial financing for such relevant funds, financial statements for such enterprise or other funds should be included.

(2) *Debt Other Than General Obligation Debt.* When the source of the resources to discharge the issuer's obligations to the holders of the securities being offered is limited to a particular fund, *e.g.*, revenue of an enterprise fund, normally, only the financial statements of that fund

need be presented. Such financial statements should indicate pertinent restricted and unrestricted accounts as provided in existing bond indentures, ordinances or similar instruments. When the source is primarily a particular fund but the obligation is also payable from another fund, the financial statements of both funds should be included in the official statement. If the issuer also pledges its full faith and credit, all financial statements relevant to the source of payment for the securities being offered should be included.

(3) Full disclosure in conformity with generally accepted governmental accounting principles requires that financial statements be accompanied by notes to the financial statements which supplement or clarify the data contained in the financial statements. Typical notes to the financial statements provided with a governmental entity's financial statements include the following:

- A summary of significant accounting policies.
  Principles of accounting.
  Identification and definition of included funds.
  Basis of accounting.
  Budgetary policies.
  Accounting policies for specific accounts.
  Fixed assets.
- Bond indenture provisions relating to accounting and reporting.
- Long-term debt provisions.
- Leases and other commitments.
- Provisions of public employee retirement systems, including costs, liabilities, unfunded obligations, actuarial assumptions and most recent valuations.
- Contingencies.

(4) Supporting schedules to financial statements should be included to provide significant detail where necessary to further reflect the financial position or results of operations of the various funds (groups of funds) included in the offering statement. Examples of such supporting schedules and of statistical tables are contained in *Governmental Accounting, Auditing, and Financial Reporting,* issued by the National Council on Governmental Accounting.

SECTION VII

Legal Matters

A. Describe any pending legal proceedings which may materially affect the issuer's or enterprise's ability to perform its obligations to the holders of the securities being offered, including the effects of the legal proceedings on the securities being offered and on the source of payment therefor. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings, and the relief sought. In appropriate cases, include or summarize, with the consent of counsel, an opinion of counsel as to the merits of the legal proceedings. Provide similar information as to legal proceedings which have been threatened to a degree which constitutes a material possibility that they will be instituted. An opinion of counsel with respect to such legal proceedings may, with the consent of counsel, be included or summarized in the official statement. State the name of such counsel.

B. With the consent of bond counsel, include or summarize the approving legal opinion of bond counsel regarding the issue of the securities, or indicate that such an opinion will be furnished with the securities. State the name of such bond counsel.

C. Describe the tax status of the securities and the interest thereon. With the consent of counsel, include or summarize an opinion of counsel as to such tax status. State the name of such counsel.

D. It is customary for the issuer or enterprise to indicate that at closing a certificate of no litigation will be provided that no litigation is pending which would affect the validity of or security for the securities.

SECTION VIII

Miscellaneous

A. Ratings. If ratings for the securities being offered have been received, state all ratings of the securities being offered and the names of the rating agencies. If no ratings have been obtained or a rating refused for any such securities, a statement should be made to such effect. Changes in any ratings of any securities of the issuer during the preceding two years should be described.

It is suggested that the discussion indicate that (1) such ratings reflect only the views of such agencies and either set forth an explanation of such ratings as described by such agencies or refer the prospective purchaser to such agencies for an explanation of such ratings; (2) there is no assurance that such ratings will continue for any period of time or that they will not be revised or withdrawn; and (3) a revision or withdrawal of the ratings may have an effect on the market price of the securities.

Consideration may be given to stating the ratings in the body of the official statement rather than on the cover page.

B. Interest of Certain Persons Named in Official Statement. If any person named in the official statement as having prepared or certified an engineering report, feasibility study or similar analysis included or referred to therein was employed for such purpose on a contingent basis, furnish a brief statement of the nature of such contingent basis. If any such person was or is connected with the issuer as an underwriter, financial advisor, security holder, member of the governing body, executive official or employee, describe such connection.

C. Additional Information. Efforts should be made to make available to underwriters and investors specimens or copies of any indenture and other authorizing or governing instruments defining the rights of holders of the securities being offered, or preliminary forms thereof. The availability may be upon request or upon payment by the underwriters or investors of a reasonable copying, mailing and handling charge. The official statement may inform underwriters and investors of the availability of the information and the means of obtaining it. In such event, the description of the terms of the securities being offered may be qualified by reference to such additional information.

Guidelines for the Preparation of Yearly Information Statements and Other Current Information

Municipal Finance Officers Association

Original Publication in May 1978

Preface and Acknowledgements

The following Guidelines are designed to assist state and local governments in issuing yearly information statements and in providing other current information to securities holders, potential purchasers of securities in the secondary market, dealers, securities analysts and rating services. Increasingly, it is evident that a need exists for continual communication of information over the life of outstanding bonds.

These Guidelines should not be confused with the *Guidelines for Offerings of Securities*, contained in the front half of this publication (first published as *Disclosure Guidelines for Offerings of Securities by State and Local Governments* in December 1976). There is a great deal of overlap between the informational items suggested in the two documents. But the two are different documents designed for different purposes. The *Guidelines for Offerings* suggest information for provision in official statements for offerings of securities, thus providing credit information so that decisions may be made regarding the purchase of the securities offered. Such official statements, which are released shortly before the sale of bond issues, become outdated. Investors, dealers and analysts need current information in the secondary market on which to base decisions or recommendations to purchase, sell or hold securities. Rating agencies need information to maintain ratings. These Guidelines suggest information to be provided as a basis for such decisions.

The financial statements suggested in these Guidelines are included in the comprehensive annual financial reports called for in *Governmental Accounting, Auditing, and Financial Reporting*, issued by the National Council on Governmental Accounting. The NCGA is developing the concept of general purpose financial statements. The data suggested in these Guidelines may be combined with or extracted from any such general purpose financial statements, as well. Such an approach could achieve a unity of the official statements, comprehensive annual financial reports, yearly information statements and general purpose financial statements.

The initial public draft of these Guidelines was developed by the MFOA Disclosure Procedures Special Committee appointed on March 30, 1976. The members of the Special Committee were:

William J. Reynolds, Chairman, Town Comptroller, Greenwich, Connecticut
Gerard Giordano, Partner, LaBoeuf, Lamb, Leiby & MacRae, New York, New York
Donald R. Hodgman, Partner, O'Melveny & Meyers, Los Angeles, California
Robert Todd Lang, Senior Partner, Weil, Gotshal & Manges, New York, New York
James W. Perkins, Partner, Palmer & Dodge, Boston, Massachusetts
Robert W. Doty, then General Counsel, Municipal Finance Officers Association, Washington, D.C.

The draft was revised by the MFOA Disclosure Review Committee appointed in January 1978, consisting of:

Robert Odell, Chairman, City Treasurer, Los Angeles, California
Walter Knowles, Senior Vice President, Commerce Bank of Kansas City, Kansas City, Missouri
Edward Pendergast, Senior Investment Officer, St. Paul Companies, Inc., St. Paul, Minnesota
James W. Perkins, Partner, Palmer & Dodge, Boston, Massachusetts
William J. Reinhart, Special Assistant to the Comptroller of the Treasury, State of Tennessee, Nashville, Tennessee
William J. Reynolds, Town Comptroller, Greenwich, Connecticut
William R. Snodgrass, Comptroller of the Treasury, State of Tennessee, Nashville, Tennessee
Peter C. Trent, Executive Vice President and Manager, Municipal Bond Department, Shearson Hayden Stone Inc., New York, New York
Michael S. Zarin, Chief, Finance Division, Law Department, The Port Authority of New York and New Jersey, New York, New York
Robert W. Doty, then General Counsel, Municipal Finance Officers Association, Washington, D.C.

The initial draft and this present version of these Guidelines were reviewed by the MFOA Committee on Governmental Debt and Fiscal Policy in 1977 and 1978, respectively. The members of the Committee at the times of review were:

William J. Reynolds, Chairman (1977) and member (1978), Town Comptroller, Greenwich, Connecticut
Robert Odell, Chairman (1978) and member (1977), City Treasurer, Los Angeles, California
Grover N. Allen, member (1977 and 1978), Director, Mississippi State Bond Advisory Division, Jackson, Mississippi
Andre Blum, member (1977 and 1978), Director of Administration, Madison, Wisconsin
Harlan Boyles, member (1977), State Treasurer, Raleigh, North Carolina
Richard D. Clark, member (1978) Finance Director, City and County of Denver, Colorado
Dennis J. Date, member (1978), Finance Commissioner-Treasurer, London, Ontario
David L. Donohoe, member (1978), Treasurer, Pittsburgh, Pennsylvania
Daniel B. Goldberg, Council to the Committee (1977 and 1978), Of Counsel, Wood and Dawson, New York, New York
Harrison J. Goldin, member (1978), Comptroller, New York, New York
Carl V. Husby, member (1977 and 1978), Director of Financial Management, Long Beach, California
Selden G. Kent, member (1978), Administrative Services Manager, Phoenix, Arizona
Lennox L. Moak, member (1977), then Director of Finance, Philadelphia, Pennsylvania
Warren Riebe, member (1977), then Finance Director, Cleveland, Ohio
Duane N. Scott, member (1978), Director, Ohio Municipal Advisory Council, Cleveland, Ohio
William R. Snodgrass, member (1978), Comptroller of the Treasury, State of Tennessee, Nashville, Tennessee
John M. Urie, member (1977 and 1978), Director of Finance, Kansas City, Missouri
John T. Walsh, member (1977 and 1978), Director of Finance, Hartford, Connecticut
Michael S. Zarin, member (1977 and 1978), Chief, Finance Division, Law Department, The Port Authority of New York and New Jersey, New York, New York

The basic suggestions herein, which correspond to the suggestions in the *Guidelines for Offerings of Securities,* were drafted in 1975 by MFOA staff and consultants in liaison with dealers and bond counsel, following planning which began in 1974. The product of that drafting process was released in November 1975 as an Exposure Draft of the *Disclosure Guidelines for Offerings*. After a public comment period, a public hearing was held in Washington in March 1976, and a Revision Drafting Committee was appointed as follows:

Donald J. Robinson, Chairman, Partner, Hawkins, Delafield & Wood, New York, New York
J. Chester Johnson, then Vice President, Morgan Guaranty Trust Company of New York, New York, New York
Richard Laird, Chief Accountant, Columbus, Ohio
Anthony M. Mandolini, Partner, Peat, Marwick, Mitchell & Co., Chicago, Illinois
David G. Ormsby, Partner, Cravath, Swaine & Moore, New York, New York
Staats M. Pellett, Vice President, Bessemer Trust Company, NA, New York, New York
William R. Snodgrass, Comptroller of the Treasury, State of Tennessee, Nashville, Tennessee
Peter C. Trent, Executive Vice President, Shearson Hayden Stone, Inc., New York, New York
John M. Urie, Director of Finance, Kansas City, Missouri
John E. Petersen, then Washington Director, Municipal Finance Officers Association, Washington, D.C.
Robert W. Doty, then Associate Professor of Law, Creighton Law School, Omaha, Nebraska

The work of the Revision Drafting Committee was reviewed by the MFOA Governmental Debt and Fiscal Policy Committee and the MFOA Executive Board prior to the approval of the release of the *Disclosure Guidelines for Offerings* in December 1976. At this point, work began on the Guidelines herein. The initial drafts of these Guidelines were reviewed by the Disclosure Procedures Special Committee during 1977, prior to their release in Exposure Draft form on September 9, 1977, by the Governmental Debt and Fiscal Policy Committee.

The Exposure Draft was made available to and comments were solicited from MFOA members, dealers, bond counsel, investors, accountants, analysts and others during an eight-month comment period. They were discussed at a series of colloquia held in six cities during October and November 1977. Comments were solicited in these colloquia, as well as in other meetings with state and local officials and other participants in the municipal securities market.

A number of comments were received, containing excellent suggestions for the improvement of the document. Notices were published from time to time in the MFOA newsletter regarding the review process, and this process was culminated in May 1978 with the completion of the work of the Disclosure Review Committee on the original publication of these Guidelines. This work immediately was reviewed by the Committee, the MFOA Committee on Governmental Debt and Fiscal Policy and the MFOA Executive Board in connection with a review of the *Guidelines for Offerings*, with the resultant publication of this revision.

Special appreciation is expressed to Robert W. Doty, Partner, Squire, Sanders & Dempsey, Washington, D.C. and John E. Petersen, Director, MFOA Government Finance Research Center, Washington, D.C., for their coordination of the Guidelines projects.

In addition, we welcome the opportunity to note our appreciation of the time and energy the following groups contributed to the original *Guidelines for Offerings*: American Bar Association, State and Local Government Accounting Committee of the American Institute of Certified Public Accountants, Dealer Bank Association, Public Securities Association, Securities Industry Association Public Finance Council, Association of the Bar of the City of New York, National Association of Counties, National Association of State Auditors, Comptrollers and Treasurers, National Conference of State Legislatures, National Governors' Association, National League of Cities, U.S. Conference of Mayors, and the many other public interest, professional and governmental organizations which participated in the development of the Guidelines. MFOA particularly wishes to thank the National Science Foundation for funding which enabled this project to be executed (Grant No. APR 75-17227).

As can be seen, these Guidelines are the product of many months of thought and debate. From its beginning, the project has involved a broad participation of issuers, investors, dealers, banks, legal counsel and accountants.

This breadth of involvement has resulted in an excellent tool which we believe contributes significantly to the process of informational provision in the municipal securities market. We urge state and local issuers to use this tool as an expression of their professionalism.

Research on the effectiveness of the December 1976 Guidelines and the earlier exposure draft has demonstrated that state and local issuers are exercising this professionalism, for there is a consistent pattern of improvement in the information provided by municipal securities issuers. Initial research on this improvement was published in Petersen, Doty, Forbes & Bourque, "Searching for Standards: Disclosure in the Municipal Securities Market", 1976 Duke L.J. 1177 (1976). Preliminary indications from later research confirm continuation of the earlier trends. With such significance being attached to the Guidelines, it is important for MFOA to perform the efforts necessary to improve the document on a continuous basis and to respond to changing conditions in the municipal securities market.

These Guidelines represent an industry consensus on the provision of information, and are a refinement of the original Guidelines, based upon recent experience and comment. This revision has been designed to facilitate the reading and comprehension of the Guidelines. Particular attention has been paid to the areas of pension information and disclosure by state issuers. These Guidelines will be subject to continued periodic review and updating as further experience is gained in their use.

It is important that the related projects of MFOA to improve the informational provision process be set forth:

(1) The *Guidelines for Offerings of Securities* to suggest information for disclosure in offerings (contained in the front half of this publication);

(2) A set of *Procedural Statements in Connection with the Disclosure Guidelines for Offerings of Securities by State and Local Governments and the Guidelines for Use by State and Local Governments in the Preparation of Yearly Information Statements and Other Current Information* to speak to a number of specific questions regarding the informational provision process;

(3) A *Sample Official Statement* (in preparation) to assist issuers particularly of general obligation bonds respecting a format which has been found to be helpful by investors and analysts in comprehending information provided by issuers; and

(4) A Municipal Securities Information Document Central Repository to serve the functions of collecting and disseminating municipal securities information documents, such as final official statements, yearly information statements, annual reports and other information documents. Investors, dealers and other parties interested in reviewing information already may obtain documents from the Repository regarding more than 1,000 municipal issuers.*

*The availability of information on a particular issue or issuer through the Repository is expected to benefit that issue or issuer materially through increased dissemination of information. *Final* documents may be submitted to the Repository at no charge by sending one copy to MFOA at 1750 K Street, N.W., Suite 650, Washington, D.C. 20006. Microfiche copies of most documents in the Repository will be made by Disclosure, Incorporated, of Bethesda, Maryland, and sold as a part of its Municipal Securities Information Document Library. Issuers contributing *final* documents to the Repository may receive one microfiche copy of their documents, which are copied, subject to their agreement not to reproduce or publish any such microfiche for resale, in whole or in part, in microform, paper form or otherwise. MFOA active members and associate members may purchase microfiche copies of documents in the Repository at discounts of 10% and 3%, respectively, from the normal prices as of the date of acceptance of the order.

These Guidelines, the related documents and the Municipal Securities Information Document Central Repository are extremely significant developments in the municipal securities market. Only three years ago, some doubted that an entire industry could respond so effectively to the crucial issue of disclosure or that it could solve the difficult and complex problems related to that issue. Governmental issuers, investors, dealers, counsel, accountants and financial advisors deserve only the highest degree of praise for their concern and cooperation on these matters.

Donald W. Beatty
Executive Director
Municipal Finance Officers Association

Table of Contents

Introduction

These Guidelines are designed for use by state and local governments in providing information to securities holders, potential purchasers of securities in the secondary market, dealers, securities analysts and rating services. Many issuers now provide such documents, and the data also often are contained in official statements for offerings of securities when issuers make offerings on a regular basis. While these issuers may be able to move reasonably soon to the preparation of yearly information statements, those who have not recently issued obligations and utilized *Guidelines for Offerings of Securities* may need additional time to compile and release the suggested yearly data.

Official statements released shortly before the sale of bond issues become outdated. Investors and dealers in the secondary market need current information on which to base decisions. The information suggested in these Guidelines is intended to assist in the production of documents which will be acceptable for that purpose. It is not intended, however, to create requirements or a legal obligation to provide information regarding any or all items that are suggested.

These Guidelines suggest material which an investor might consider of importance in making an informed investment decision and which generally is available in financial reports, budget documents and other data accessible to the issuer. Information in the issuer's records or which can be obtained from another source, such as U.S. Government census reports, normally should be obtained, compiled and reported. There should be an appropriate indication of the source of the information, if the source is other than the issuer.

It is possible that other information, not suggested herein, may at times be material and in such cases should be provided. Certain types of issuers or circumstances might require additional information in order to give an adequate description of such issuers or circumstances. There also may be cases in which some of the suggested information is unnecessary or irrelevant. The overriding consideration is to provide a complete, accurate and objective description of those factors that relate to the securities being traded in the market and that are necessary to make an informed investment decision.

The order of presentation suggested in these Guidelines should not be deemed to recommend a specific order of presentation of information in the information statements. MFOA is preparing a Sample Official Statement which indicates in Part II thereof a format which has been found helpful for yearly information statements, and it is suggested that issuers consider that format. The information set forth in the information statements should be presented in a concise, understandable fashion. Consideration should be given to setting forth material in a manner which will give appropriate emphasis to such material in view of its relative importance.

The financial statements suggested in these Guidelines are included in the comprehensive annual financial reports called for in *Governmental Accounting, Auditing, and Financial Reporting,* issued by the National Council on Governmental Accounting (NCGA). The NCGA is developing the concept of general purpose financial statements. The data suggested in these Guidelines may be combined with or extracted from any such general purpose financial statements, as well. Such an approach could achieve a unity of the official statements, comprehensive annual financial reports, yearly information statements and general purpose financial statements.

The function of a yearly information statement may be satisfied through availability of other documents containing substantially the same information as would a yearly information statement. For example, official statements used for offerings during the fiscal year may contain all the relevant data. In such a case, the issuer may desire to consider reliance upon a two-part official statement, one part of which contains only offering data which may be detached so that the second part may constitute a yearly information statement. Conversely, yearly information statements may serve as official statements upon the attachment of a part including offering information. By such means, issuers may avoid the preparation of multiple documents where information remains reasonably stable during the fiscal year.

Some sections of these Guidelines are more appropriate for general obligation securities, while other sections are more appropriate for revenue securities or special obligation securities. In some cases, a particular security may combine characteristics of a general obligation security, a revenue security or a special obligation security. For example, revenue sources from an enterprise or enterprises* or a specific tax may be the primary source of payment and security for an issue of bonds, while additional security is furnished by the general taxing power of the issuer. Or the issuer may have both revenue and general obligation securities outstanding. Under these circumstances, consideration should be given to providing the appropriate information suggested as to both types of securities. These Guidelines are not appropriate for information regarding obligations issued for the purpose of providing pollution control or industrial facilities where the payment of the securities is solely dependent upon payment by the private entity involved.

To insure dissemination of reported information, it is important that procedures be created whereby interested parties may receive information on a continuing basis. Issuers should consider making information available to local news publications for dissemination. Certain issuers, whose securities are widely held or actively traded, also should consider making information available to regional and national news publications.

In addition, it is suggested that issuers consider maintaining a mailing list of all parties who wish to receive information furnished by the issuers and that issuers consider inserting an appropriate notice (not constituting a contractual commitment) in official statements regarding the maintenance of the mailing list. Information may then be mailed to such parties as soon as it is prepared. Issuers also should be prepared to make copies of the information available to parties not listed on the mailing list.

As the foundation for provision of current information, these Guidelines suggest the release of current information on a yearly basis. This should be done at a time when the information is still meaningful, such as within 90 to 150 days after the end of the issuer's or enterprise's fiscal year. Where this is not possible, release of information should be made at the earliest possible time, but in any case, an effort should be made to disseminate the information not later than 180 days after the close of the fiscal year. The information should be prepared for the same fiscal period each year.

These Guidelines also suggest release, other than on a yearly basis, of

*As used in these Guidelines, "enterprise" means any undertaking or activity relating to the construction, acquisition, operation or maintenance of facilities or services or otherwise performing governmental functions which are expected to generate revenues which are to be a material source of payment for the principal of and interest or premium on the securities.

official statements and of information describing certain events which have a major effect on an issuer's finances. Such information should be released immediately upon its availability in a reliable form. Issuers should endeavor to obtain reliable information as early as possible so that a prompt release may be made.

These Guidelines are not intended to establish standards of legal sufficiency. No implication is intended that previously prepared documents have been inadequate or that any document prepared in the future is inadequate solely because it does not comply with suggestions in these Guidelines. It should be emphasized that those preparing information should take great care to see that it is accurate and not misleading. Responsibilities of the various participants with respect to the development of information should be described in the information statements. Where appropriate, the various participants or attesting officials should consider the necessity of certifying to the accuracy and completeness of the material they have prepared.

SECTION I

Cover Page

A cover page for a yearly information statement should contain the following information:

(1) The name of the issuer (with appropriate identification).

(2) The types or titles of outstanding issues (*e.g.*, general obligation, water revenue, *etc.*)

(3) A reference to the availability of the issuer's comprehensive annual financial report and to the means by which a copy thereof may be obtained, including the name, address and phone number of the official who can provide that copy.

(4) The name, address and phone number of the issuer official(s) who can answer questions about data disclosed in the yearly information statement or who can direct inquiries to the appropriate responsible parties. If additional information of significance is obtained in this way, consideration should be given to supplementing or amending the yearly information statement, and if appropriate, to issuing a news release containing such additional information.

On the inside front cover or on the back cover of the yearly information statement, a Table of Contents should appear to indicate in reasonable detail the pages on which particular types of information may be found.

It is suggested that issuers consider maintaining a mailing list of all parties who wish to receive information furnished by the issuers (such as official statements, yearly information statements and other information) and that issuers consider inserting an appropriate notice (in a form which would not constitute a contractual commitment) in yearly information statements regarding the maintenance of the mailing list. Such a notice may be placed on the inside front cover or on the back cover.

Issuers which submit their final official statements, yearly information statements, annual reports and other information documents to the MFOA Municipal Securities Information Document Central Repository may consider a statement on the cover of the yearly information statement regarding that fact and regarding the availability of copies of those documents through the Repository.

SECTION II

Description of Issuer and Enterprise

A. Issuer. The information suggested herein would normally apply to general obligation securities which are payable from ad valorem taxation or other taxes.

Data should be given to provide sufficient background and general information regarding the issuer. Investors should be informed of factors which indicate the ability of the issuer to impose and collect, and the ability of its citizens to pay, taxes and other receipts which can be used to discharge the issuer's obligations. The information presented herein would normally include the issuer's range and level of services and the capacity of the issuer to provide such services. In addition, under most circumstances, a discussion of important population, economic and educational data should also be presented. Examples of the types of information which may be appropriate are:

(1) A statement indicating the year in which the issuer was established; the name of the state or other jurisdiction under the laws of which it was established; the form of government, such as mayor-council or city manager; the important powers and the governmental organization of the issuer; and relationships to and areas of shared responsibilities with other governmental entities.

(2) A list of the executive officials of the issuer. Discuss the manner in which the principal officials of the issuer are chosen, their respective terms, and the authority and method by which policy and program decisions are made.

(3) A brief description of (a) the principal governmental services performed by the issuer; (b) services which the issuer is required to perform; (c) the revenue sources for the services, and the degree of self-support of any service activity, described pursuant to (a) and (b); (d) the extent to which similar or differing governmental services are performed

by or performed in conjunction with other governmental entities; and (e) any recent major changes or interruptions in such services.

(4) A discussion of the general character of the principal facilities of the issuer. The material should allow the investor to appraise the ability of the issuer's principal facilities to continue to provide issuer services. Describe the capital improvements plan which indicates future construction requirements of the issuer and the currently projected methods of financing such expenditures.

(5) A statement or description of historical and current data concerning and estimates of the issuer's population, per capita income, median age, education levels, school enrollment and unemployment rate.

(6) A statement or description of historical and current data concerning commercial and residential construction, commercial and savings bank deposits, property valuation and values in housing stock.

(7) A statement or description of historical and current data concerning (a) the principal industries, commercial and governmental entities, and other employers in the issuer's immediate geographical area; (b) the number of persons employed by such industries, entities or employers; (c) the economic stability of such industries, entities or employers; and (d) the economic effects of any recent addition or loss of major industrial, commercial or governmental entities, or other employers.

For state government issuers, a presentation of the state gross product by sectors (*e.g.*, manufacturing, construction, mining, trade, services, *etc.*) and a discussion of historical and current data concerning the economic stability of such sectors may be substituted for the matters suggested in paragraphs (6) and (7) above.

(8) The number of persons presently employed and the percentage of employees of the issuer who belong to unions or other collective bargaining groups. If the total number of employees has changed by more than 15% within the previous three years, describe the change and the reasons therefor. Characterize employee relations.

B. Enterprise. The following information normally should be provided regarding outstanding revenue securities which are secured from the earnings of an enterprise. However, to the extent that the sources of revenues to pay debt service on the securities are dependent on the viability of a service area, certain information suggested in the preceding section should be set forth. Generally in the case of securities which are paid from a multiplicity of similar facilities or sources, such as obligations of a state housing authority or a student loan authority, the information suggested in this section is not necessary regarding each such facility or source on an individual basis.

(1) State the year in which the enterprise was organized, its form of

organization (such as "a corporation," "an unincorporated association," "a department of the issuer" or other appropriate statement) and the name of the state or other jurisdiction under the laws of which it was organized. Name the municipalities, counties and states in which the enterprise is located and describe the service area.

(2) List the executive officials of the enterprise. Discuss the manner in which the executive officials of the enterprise are chosen, their employment over the past five years, their respective terms, and the authority and method by which policy and program decisions are made.

(3) Describe the location and general character of the principal facilities of the enterprise. If any property is leased or otherwise not held in fee or is held subject to any major encumbrance, discuss briefly the important factors in this regard. Provide sufficient information so that an investor may be able to appraise the ability of the enterprise to continue to provide its services. Such information should be furnished that will inform investors of the extent of utilization and the productive capacity of the enterprise's facilities. Itemization and detailed description of the facilities generally need not be given. Describe the future construction requirements of the enterprise and the currently projected methods of financing such expenditures.

(4) If construction is planned of all or a significant part of the enterprise, briefly describe the new facilities, including the proposed purposes, productive capacity, anticipated life and nature of construction. State the dates proposed for the commencement and completion of the construction; the dates proposed for the commencement of operations in the new facilities; the categories of expenditures and sources of cash resources; the amount and location of the land on which the facilities are to be located; and the rights of the issuer or the enterprise in relation to the land, such as whether the land is held in fee, is leased, is held subject to encumbrances, or must be condemned or otherwise acquired before use. Describe the progress of the construction since the last yearly information statement of the issuer or enterprise. Describe any anticipated large acquisition of plant and equipment and the capacity thereof. The construction arrangements and principal contractors, engineers and other parties participating in the construction also may be of interest.

(5) If construction is planned of all or a significant part of the enterprise, reference should be made to any relevant engineer's or financial feasibility reports or studies on the feasibility of such construction as a part of the enterprise's operations. Name the parties preparing the reports or studies and whether the consent of such parties to the reference to such reports or studies has been obtained. Reference should also be made to any other reports or studies which may have a bearing on the conclusion of feasibility. All references should describe the material con-

clusions of the reports or studies. If no such report or study has been made, a statement should be made to that effect.

(6) Describe the operations performed and intended to be performed by any new or existing enterprise and the general development of such operations during the past five years, or such shorter period as the enterprise may have been engaged in operations. The description should include, but not be limited to, information as to matters such as the following areas (if the enterprise is engaged or will engage in more than one activity, provide appropriate documentation and description for each of the principal activities):

(a) The principal services rendered or to be rendered by the enterprise, and the principal users of, or service area for, including any reliance on seasonal factors related to, such services. Describe recent significant changes in the kinds of services rendered, or in the users or area served.

(b) Whether the enterprise has or will have an exclusive position in its service area, and if not, a description of the competitive conditions in the service area and the present and proposed competitive position of the enterprise, if known or reasonably available to the issuer.

(c) The numbers of customers of the enterprise at present and as proposed after the completion of construction into categories according to major sources of revenues, and an appropriate categorization of ranges reflecting amounts paid or to be paid by customers for the enterprise's services. If an important part of the operations is or will be dependent upon a single customer or a few customers, the loss of any one or more of whom would have an adverse effect on the operations or financial conditions of the enterprise, give the names of the customers, their relationship, if any, to the enterprise, and significant facts regarding their contribution to the operations of the enterprise. Describe also any federal, state or local governmental program which provides an important part of the enterprise's revenues.

(d) The parties responsible for determining and modifying rates, together with related limitations on the powers of such parties and rights of review of the enterprise or others; and any rate covenant or similar agreement on the part of the issuer or the enterprise, and the degree to which such covenant or agreement is designed to provide for debt service, and operating and any other important expenses.

(e) The sources and availability of raw materials essential to the enterprise's present and proposed operations.

(f) The status of licenses, permits and franchises required to be held by the enterprise. Describe any federal, state or local governmental regulation of the operations of the enterprise, including significant environmental protection requirements, and the effects of such regulation on the enterprise's present and proposed operations and on new construction.

(g) The numbers of persons presently employed and to be employed after completion of construction, and the percentage of employees of the enterprise who belong to unions or other collective bargaining groups. Characterize employee relations.

(h) If the enterprise has not received revenues from operations for the entire fiscal year prior to the date of the information statement, provide an analysis of the enterprise's current year's plan of operations, including a description of any results that may have been experienced since the time of the preparation of the information and a discussion of known factors and important assumptions related to operations for the next fiscal year. If such information is not available, the reasons for its not being available should be stated. Information relating to any plan should include any matters which may be important to the enterprise's construction and operations.

SECTION III

Debt Structure

The following suggested information is intended to describe various important factors related to the debt structure of the issuer or enterprise, including authority to incurr debt, debt trends, the size of prospective debt burden, and rates of retirement. The tax related information is suggested for general obligation securities. Sufficient information should be provided by the issuer or enterprise so that an investor will be able to evaluate tax or other revenue sources in relation to the obligations or commitments of the issuer or enterprise.

A. Furnish the information of the type suggested by the following table as to appropriate categories of long-term and short-term securities and other indebtedness of the issuer or enterprise:

Category of indebtedness	Amount authorized	Amount outstanding as of [date] (less sinking fund installments paid to such date)	Amount to be outstanding
	$	$	$

The "appropriate" categories of indebtedness will vary from issuer to issuer and from enterprise to enterprise. Generally, the purpose or form of the indebtedness may be used as a basis for categorization. The information furnished also include a separate description of other commitments, such as long-term leases, lease-purchase obligations, installment purchase obligations, guaranteed debt, "moral obligations," indebtedness, other forms of contingency "off balance sheet" indebtedness.

Debt should be regarded as "authorized" when all legal steps have been taken by the issuer for its authorization for issuance, such as required approval by the governing body or the voters. However, actions requiring only minor administrative performance normally should not be regarded as a stage for the authorization of debt.

The amount of indebtedness outstanding should be as of the latest practicable date, within the previous 120 days, with any major changes in debt position including any new obligations issued during the interim, appropriately indicated. In stating the amount to be outstanding, give effect to required or permitted debt requirement from existing resources.

B. Furnish a debt service schedule of the outstanding indebtedness of the issuer or enterprise, including required payment of principal and interest, and where appropriate, authorized indebtedness to the final maturity date of all outstanding securities. Debt payable from different tax or revenue sources should be shown in separate columns as well as in the "Total" column. Indicate in footnotes to the schedule any assumptions, such as interest rates on authorized but unissued debt, on which information in the schedule is based. The schedule may be presented in substantially the following tabular form:

Fiscal year ending [date]	Principal	Interest	Total
19__	$	$	$
19__			$
19__			$
.			.
.			.
.			.
(year)			$

C. Furnish the information called for by the following table as to indebtedness of overlapping governmental entities. The information should be as of the latest practicable date, within the previous 120 days, with any major changes in debt position during the interim appropriately indicated. Unless inappropriate, the information in the last column should be based upon the estimated true valuation of real property in the respective jurisdictions.

Name of overlapping entity	Amount of authorized debt	Amount of outstanding debt (less sinking fund as of [date])	Percent of outstanding debt chargeable to persons or property in issuer's boundaries (1)
	$	$	%

(1) Based upon estimated true valuation of real property in the respective jurisdictions.

D. Give information as of the end of each of the issuer's last five fiscal years with respect to the issuer's (1) debt per capita; (2) debt expressed as a percentage of total assessed valuation of taxable real and personal property; (3) debt expressed as a percentage of total estimated true valuation of taxable real property; and (4) debt per capita expressed as a percentage of estimated per capita income of individual taxpayers residing in the jurisdiction.

E. State the amounts of long-term and short-term indebtedness of the issuer or enterprise outstanding as of the end of each of its last five fiscal years.

F. Describe any legal debt or tax limit of the issuer or enterprise, the legal source of the limit, the indebtedness or tax rates chargeable to the limit, and the unused borrowing or taxation margin.

G. If any securities of the issuer have been in default as to principal or interest payments or in any other material respect at any time in the last 25 years, state the circumstances giving rise to such default, including descriptions of the relevant provisions of the securities and authorizing and governing instruments and the amounts involved. State whether such default has been terminated or waived, and if so, the manner of such termination or waiver.

SECTION IV

Financial Information

The suggested information that follows is intended to indicate important factors related to the financial condition and results of operations of the issuer or enterprise. The section is divided into two parts: first, there is suggested information that would summarize the financial practices and recent results of operations of the issuer or enterprise; the second part sets forth the information to be presented as the financial statements of the issuer or enterprise for the last two fiscal years.

A. General Description of Financial Practices and Recent Results of Operations:

(1) Furnish in comparative columnar form a summary of operations for the fund/account groups which would provide information pertinent to the securities outstanding. Such information should be provided for each of the last five fiscal years and, in the case of enterprises and in those unusual circumstances where it is otherwise appropriate, for the latest practicable date for interim periods of the current and prior fiscal year if the information statement is dated more than 120 days after the last fiscal year.

Information regarding the operations of enterprise and intragovernmental (internal) service funds should be presented separately from information regarding the operations of the general and other funds of the governmental entity.

(a) Information regarding operations of the general and other fund/account groups may be presented on a combined basis as appropriate. Such summary should include major categories of actual revenues and expenditures and comparable budgeted amounts.

In addition, beginning and ending fund balances and transactions reported as adjustments to fund balances should be included.

(b) Subject to appropriate variation to conform to the nature of the operations and of an enterprise or intragovernmental (internal) service fund, the summary and discussion should include: operating revenues; operating expenses; interest expense; income from continuing operations; income from discontinued operations; extraordinary items; the cumulative effects of changes in accounting principles; and net income or loss. The summary should also include the amount of any changes in retained earnings other than net income or loss, and the amount of retained earnings at the end of each of the fiscal periods presented.

(c) Following each summary of operations, include a discussion of the material trends and changes and the reasons therefor related to the components of such summary. For example, if debt service, as a percentage of total expenditures, has increased significantly in recent years, describe the conditions which contributed to the trend. Furthermore, if certain revenues or expenditures are dependent on the financial policies or practices of another governmental entity, state the amounts involved and describe the relationship of such other entity to such issuer or enterprise. In addition, such discussion should include the effect of a change in accounting principles or procedures during any of the years presented.

(d) Describe any known facts which would significantly affect any financial information presented or the future financial operations of the issuer or enterprise.

(2) Describe generally the accounting practices of the issuer or enterprise. Indicate any important deviations (and the effects thereof, if quantifiable) from generally accepted governmental accounting principles, as presented and recommended in the National Council on Governmental Accounting (formerly National Committee on Governmental Accounting) publication, *Governmental Accounting, Auditing, and Financial Reporting* and the Industry Audit Guide of the American Institute of Certified Public Accountants, entitled *Audits of State and Local Governmental Units*, as such generally accepted governmental accounting principles are supplemented and modified from time to time. The information recommended herein may be cross-referenced to the notes to the financial statements.

(3) Describe the issuer's or enterprise's budgetary processes. The description should include matters such as: the parties responsible for the development of operating and capital budgets; the processes by which the budgets are approved and adopted; legal requirements for balancing such budgets and institutional mechanisms to assure achievement of that goal. Summarize the pertinent current operating and capital budg-

ets. State whether the issuer or enterprise has conformed to such budgets to date, and if not, the significant variations which have occurred or are expected to occur. Describe the reasons for any material differences between the budgets and the actual financial results for the last five fiscal years and the current fiscal year.

(4) If the securities outstanding are payable only from particular revenues of the issuer, such as a particular tax or assessment, describe the revenues and give sufficient historical and other data to indicate the reliability of such revenues to meet debt service on the securities.

(5) If the obligations are secured in whole or in part by taxes of any type, describe briefly the manner in which such taxes are levied and collected. Where appropriate, describe briefly the manner in which property valuations and assessments are determined. Include descriptions of (a) the manner in which delinquent taxes are collected and the result of such collection efforts; (b) the interest and penalty charged on delinquent taxes; (c) important changes during the last five years in tax assessment, levy or collection practices; and (d) the reasons for such changes. State the value of total tax title liens owned by the issuer as of the end of each of its last five years and as of a recent date. Describe briefly the procedures followed in foreclosure. Describe the priority of tax claims of the issuer over other indebtedness of taxpayers.

(6) Give in tabular or other appropriate form with respect to the issuer, as of the end of each of its last five fiscal years and as of a recent date, information as to (a) its assessed valuation of taxable real property; (b) its estimated true valuation of taxable real property; (c) its assessed valuation of taxable personal property; and (d) the assessed valuation of taxable real property expressed as a percentage of the estimated true valuation thereof. Segregate such information as to industrial, commercial, utility and residential properties. For state government issuers, a presentation of the information suggested in paragraph (7) below may be substituted for the matters suggested in clauses (a) through (d) above or may be presented as additional information, where appropriate. State in tabular or other appropriate form the total tax levy and the accumulated amount of delinquent taxes as of the end of each of the issuer's last five fiscal years and the tax delinquency rate for each of such fiscal years and for the current fiscal year to date. Describe recent borrowing against such delinquent taxes and any anticipation of collection of delinquent taxes in budgets for current or future years. State the accounting policies applied in writing off delinquent taxes.

(7) Where any tax or revenue source, including any intergovernmental aid program, other than property taxes exceeds 10% of the aggregate of the issuer's tax and revenue sources in the issuer's most recent fiscal year, or where all such tax or revenue sources other than property taxes

exceed 15% of such aggregate, give in tabular or other appropriate form with respect to the issuer, as of the end of each of its last five fiscal years, the amount received from each such tax or revenue source exceeding 10%, and all such tax or revenue sources, respectively, and of the volume of activity generating such funds (*e.g.*, personal income, gross sales and gross product). Where intergovernmental aid programs as a whole provide more than 10% of the issuer's tax and revenue sources in its most recent fiscal year, name and describe the principal programs and state whether such programs are of short-term or long-term duration. In all other cases, for taxes and other revenue sources (other than property taxes), including intergovernmental aid programs, include descriptions of the significance thereof to the issuer and recent volume of activity generating such funds.

(8) A table setting forth the ten largest taxpayers of the issuer, where appropriate and not prohibited by law, should be presented. Taxpayers paying less than 5% of the total tax levy may be omitted. State the amount of taxes paid by each such taxpayer, the percentage of the total tax levy or tax collections represented by such amount, and in the case of property tax levies, the assessed valuation of taxable real property of each such taxpayer.

(9) With respect to interim borrowing for operational purposes, such as revenue anticipation notes or tax anticipation notes, present the appropriate anticipated cash flow.

(10) If the proceeds from the sale of any securities (other than revenue or tax anticipation short-term obligations secured by and payable solely from anticipated revenues or taxes) or any nonrecurring revenues have been used for current operating expenses at any time in the last ten years, describe the circumstances giving rise to such use, including the amount used in each of such years.

(11) If payments on outstanding securities or other obligations have been met through loans from other governmental fund sources, indicate the sources, the amounts involved, the purpose (as for payment of principal, interest or operating cost), and any commitments for repayment of the loans.

Describe briefly any federal, state or other legislation, program or procedure which would apply specifically to the issuer in times of financial emergency.

(12) Describe briefly the significant characteristics of the issuer's or enterprise's public employee retirement systems or other pension plans. These characteristics may include items such as the following:

(a) Whether the plans are single employer plans or part of a statewide or other multi-employer system.

(b) A brief description of legal obligations of the issuer to finance benefits.

(c) Number and type of active and retired employees covered in the plans (*e.g.*, all employees, police, fire officials or teachers).

(d) Basis of financing (*e.g.*, member and employer contributions and investment income).

(e) The actuarial or other method used to compute required contributions and a summary of required contributions for the most recent five-year period, which may be presented in the following format:

Contributions in Relation to Covered Employee Payroll

	Fiscal Years Ended				
	19xx	19xx	19xx	19xx	19xx
Number of covered employees					
Employer contribution rate	%	%	%	%	%
Actual employer contributions	$	$	$	$	$

(f) State historical or current data concerning adverse trends or factors in the financing or operation of the pension plans as they relate to the employer's contributions or liabilities to the plans. Information concerning the plans contained in the financial statements included in the yearly information statement should be cross-referenced.

For governmental units which have single employer plans, provide the following additional information:

(g) Actuarial valuations:
- (i) Frequency.
- (ii) Date of latest valuation.
- (iii) Actuarial method used.
- (iv) A summary of the major assumptions used, *e.g.*,
  - *(a)* Investment return.
  - *(b)* Salary increases.
  - *(c)* Age and service retirement.

(d) Benefit changes after retirement.
(e) Withdrawal from employment.
(f) Death before and after retirement.
(g) Disability retirement.
(h) Other major assumptions.

(v) Treatment of actuarial gains and losses.
(vi) Basis of asset valuation.
(vii) Amount of and period of financing unfunded accrued liabilities (if any) and the ratios of

(a) actual employer contributions (not including contributions to finance unfunded accrued liabilities), and

(b) employer contributions to finance unfunded accrued liabilities

to covered employee payroll.

Liabilities and costs pertaining to other employee benefits such as vacation and sick leave may be material. When that is the case, such liabilities and pertinent details should likewise be discussed.

B. Financial Statements

Uniformity in the presentation of financial information and the consistent application of accounting principles are essential for adequate financial reporting. To that end, financial statements should be prepared and presented in conformity with generally accepted governmental accounting principles, as modified from time to time,[1] and should be audited in accordance with generally accepted governmental auditing standards.[2]

If financial statements are prepared in conformity with laws applicable to the issuer and their presentation does not conform with generally accepted governmental accounting principles, the material differences

[1]As contained in the following authoritative sources: *Governmental Accounting, Auditing, and Financial Reporting* (1968) issued by the National Council on Governmental Accounting (NCGA); *Audits of State and Local Governmental Units* (1974) published by the American Institute of Certified Public Accountants (AICPA); other pronouncements of the NCGA and AICPA; and pronouncements of the Financial Accounting Standards Board.

[2]As contained in the *Statement on Auditing Standards* published by the American Institute of Certified Public Accountants; and in *Standards for Audit of Governmental Organizations, Programs, Activities & Functions* (1972) published by the U.S. General Accounting Office and *Audits of State and Local Governmental Units* (1974) published by the American Institute of Certified Public Accountants.

between such laws and generally accepted accounting principles should be discussed and, if practicable, the effects of such differences should be stated. Financial statements should be audited by an independent governmental audit organization, an independent certified public accountant, or an independent licensed public accountant. If such an audit is not in accordance with generally accepted governmental auditing standards, the nature of the audit and how it differs from such standards should be discussed.

Consent of the certified public accountant or other independent auditor should be sought if the name of the independent auditor is used in any way in connection with the financial statements or financial data included in the information statement. If such consent is not obtained, such fact and the reasons therefor should be discussed.

The financial statements should be included in the information statement for those funds and account groups which would provide information pertinent to the securities outstanding. The information would normally include financial statements for those funds which will provide the resources to discharge the issuer's obligations to the holders of the securities outstanding and for other funds or account groups which would provide information material to such funds. In all cases, if some fund other than the fund with the primary obligation either requires substantial financing from or furnishes substantial financing for the fund with the primary obligation, financial statements for the other fund should be included. Generally, the financial statements of an issuer or enterprise will appear at the end of the information statement.

The financial statements for each fund and account group included in the information statement should be presented for two years and should include all basic financial statements. Depending upon applicability to the respective funds, the basic financial statements would include balance sheets, statements of revenues and expenditures, statements of changes in fund balance, statements of income, statements of changes in retained earnings and statements of changes in financial position.

Reference should be made to the Introduction to these Guidelines for a discussion of the relationship between these Guidelines and *Governmental Accounting, Auditing, and Financial Reporting*, issued by the National Council on Governmental Accounting.

(1) *General Obligation Debt.* Normally, when general obligation debt is outstanding, financial statements should be included for the general fund, special revenue funds which provide revenues to pay a substantial portion of the total expenditures of the issuer and which relate to major governmental functions, debt service funds and general long-term debt group of accounts. In addition, if an enterprise or other fund either requires substantial financing from the funds relevant to the securities

outstanding or furnishes substantial financing for such relevant funds, financial statements for such enterprise or other funds should be included.

(2) *Debt Other Than General Obligation Debt.* When the source of the resources to discharge the issuer's obligations to the holders of the securities outstanding is limited to a particular fund, *e.g.*, revenue of an enterprise fund, normally, only the financial statements of that fund need be presented. Such financial statements should indicate pertinent restricted and unrestricted accounts as provided in existing bond indentures, ordinances or similar instruments. When the source is primarily a particular fund but the obligation is also payable from another fund, the financial statements of both funds should be included in the information statement. If the issuer also pledges its full faith and credit, all financial statements relevant to the source of payment for the securities outstanding should be included.

(3) Full disclosure in conformity with generally accepted governmental accounting principles requires that financial statements be accompanied by notes to the financial statements which supplement or clarify the data contained in the financial statements. Typical notes to the financial statements provided with a governmental entity's financial statements include the following:

- A summary of significant accounting policies.
  Principles of accounting.
  Identification and definition of included funds.
  Basis of accounting.
  Budgetary policies.
  Accounting policies for specific accounts.
  Fixed assets.
- Bond indenture provisions relating to accounting and reporting.
- Long-term debt provisions.
- Leases and other commitments.
- Provisions of public employee retirement systems, including costs, liabilities, unfunded obligations, actuarial assumptions and most recent valuations.
- Contingencies.

(4) Supporting schedules to financial statements should be included to provide significant detail where necessary to further reflect the financial position or results of operations of the various funds (groups of funds) included in the information statement. Examples of such supporting schedules and of statistical tables are contained in *Governmental Accounting, Auditing, and Financial Reporting*, issued by the National Council on Governmental Accounting.

SECTION V

Legal Matters

Describe any pending legal proceedings which may materially affect the issuer's or enterprise's ability to perform its obligations to the holders of the securities outstanding, including the effects of the legal proceedings on the securities outstanding and on the source of payment therefor. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings, and the relief sought. In appropriate cases, include or summarize, with the consent of counsel, an opinion of counsel as to the merits of the legal proceedings. Provide similar information as to legal proceedings which have been threatened to a degree which constitutes a material possibility that they will be instituted. An opinion of counsel with respect to such legal proceedings may, with the consent of counsel, be included or summarized in the information statement. State the name of such counsel.

SECTION VI

Miscellaneous

A. Ratings. If ratings for the securities outstanding have been received, state all ratings of the securities outstanding and the names of the rating agencies. If no ratings have been obtained or a rating has been refused for any such securities, a statement should be made to such effect. Changes in any ratings of any securities of the issuer during the preceding two years should be described.

It is suggested that the discussion indicate that (1) such ratings reflect only the views of such agencies and either set forth an explanation of such ratings as described by such agencies or refer the prospective purchaser to such agencies for an explanation of such ratings; (2) there is no assurance that such ratings will continue for any period of time or that they will not be revised or withdrawn; and (3) a revision or withdrawal of the ratings may have an effect on the market price of the securities.

B. Interest of Certain Persons Named in Information Statement. If any person named in the yearly information statement as having prepared or certified an engineering report, feasibility study or similar analysis included or referred to therein was employed for such purpose on a contingent basis, furnish a brief statement of the nature of such contingent basis. If any such person was or is connected with the issuer as an underwriter, financial advisor, security holder, member of the governing body, executive official or employee, describe such connection.

SECTION VII

Changes in Indebtedness

A. If the issuer has authorized additional indebtedness (other than tax or revenue anticipation indebtedness) since the last yearly information statement, (i) briefly describe the transaction(s) and state the classes* of securities or other indebtedness involved, the principal purpose(s) for which the indebtedness is authorized and the amount authorized for each such principal purpose; and (ii) if the terms and conditions of such additional indebtedness affect the rights of holders of any outstanding securities, state the classes* of securities or other indebtedness involved, and as to each new class* of indebtedness containing terms and conditions affecting the rights of holders of any outstanding securities, give appropriate information as to such class* to enable investors to understand their rights. Reductions in indebtedness also should be described.

B. With respect to securities outstanding, if changes have occurred in matters of the nature suggested for reporting in any of the items set forth in the next paragraph, but the changes have been unreported pursuant to these Guidelines, (i) refer to the official statements or other instruments or documents describing the original information concerning the securities and (ii) describe the changes. If changes of such nature have occurred since the issuance of the securities, but have been reported previously pursuant to these Guidelines, refer to the previous yearly information statements, official statements or other instruments or documents describing (i) the original information concerning the securities and (ii) the subsequent changes. If no such changes have occurred, refer to the official statements or other instruments or documents describing the original information concerning the securities. In all cases, where

*For purposes of this Section VII, a "class" of securities or other indebtedness is an issue or issues which differ from other issues as to security or other significant terms, other than interest rate, maturity or call provisions.

reference is made to yearly information statements, official statements or other instruments or documents, state the means by which copies or adequate summaries thereof may be obtained.

The items referred to in the preceding paragraph are as follows:

(1) Interest payment dates.

(2) Registration and exchange provisions.

(3) Trustee and paying agents.

(4) Redemption features, including sinking fund provisions.

(5) Maturity date.

(6) The pertinent provisions of the state constitution, statutes, resolutions and such other documentation that authorized the issuance of the securities.

(7) The principal purposes for which the net proceeds of the sale of the securities were authorized or proposed to be used and the approximate amount authorized or proposed for each purpose; any program of construction or addition of equipment to be financed from the proceeds of the sale of the securities or the use or availability of material amounts of other funds to be used in conjunction with the proceeds of the sale, or the sources of any such other funds.

(8) Provisions with respect to the security and sources of payment for the securities; the priority of payment or lien to any outstanding securities or other obligations of the issuer; physical properties, assets or revenues securing the securities and the provisions for their release or substitution; guarantees or insurance of payment of the principal of or interest or premium on the securities; the financial condition or other appropriate information as to such guarantor or insurer; or any known claim of such guarantor or insurer which may be asserted as a defense in a suit on the guaranty or insurance.

(9) Provisions regarding (i) the flow of funds from enterprise revenues, including any restrictions thereon, (ii) the creation or maintenance of reserves, or (iii) maintenance or insurance of properties; investment of the proceeds or the reserves from the sale of securities; or parties who hold and control the proceeds of such securities and the method by which such proceeds are to be expended.

(10) Purposes for which additional debt may be issued, including provisions permitting or restricting the issuance of additional securities or the incurrence of additional debt; legal requirements, such as voter approval, which must be made in connection with debt issuance; or if there are revenue securities outstanding, the enterprise's authority to borrow funds for various purposes and the conditions under which the enterprise is empowered to issue varying types of indebtedness.

(11) The trustee or fiscal agent, if any; the rights and duties of the trustee or fiscal agent; important conditions and the percentage of securities which would require the trustee or fiscal agent to take any action;

any indemnification the trustee or fiscal agent may require before proceeding to enforce the rights of holders of the securities; any business relationship of the trustee or fiscal agent with the issuer as security holder, depositary or otherwise; or any capacity in which the trustee or fiscal agent acts as trustee or fiscal agent for the holders of other securities of the issuer.

(12) Pertinent provisions of the state constitution, statutes or judicial decisions that could affect the status of or priority for the bondholder.

(13) The ability of any party to modify the terms of the securities, including provisions with respect to security or source of payment.

(14) Provisions in the securities outstanding, the indenture or other authorizing or governing instruments regarding specified events which constitute defaults and the remedies therefore under the securities; whether any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of such securities, indentures or instruments; or the degree to which the issuer is subject to suit for failure to perform its obligations to the holders of the securities or is subject to the enforceability of judgments resulting from such suit.

SECTION VIII

Information for Release Other Than on a Yearly Basis

A. Release should be made of each official statement for an offering of securities of the issuer containing information substantially more current than that contained either in the last official statement for an offering or in the last yearly information statement of the issuer or enterprise, whichever is the latest to be released pursuant to these Guidelines. The official statement should be prepared pursuant to the *Guidelines for Offerings of Securities,* published by the Municipal Finance Officers Association. Financial statements regarding a fiscal year not covered in any such prior official statement or yearly information statement should be regarded as "substantially more current," as should other information materially differing from information previously reported. Release of each official statement pursuant to this paragraph should be made in the manner suggested in the Introduction to these Guidelines.

B. Release also should be made as promptly as possible of information concerning major developments about the issuer or enterprise, where such information has not been released previously pursuant to these Guidelines. Normally, information regarding the continuation of a prior trend in any area of information without a material change in the direction or rate of change of the trend, should be made pursuant to sections of these Guidelines other than this Section VIII. However, information concerning any materially rapid change or the occurrence of any other event which can be expected to affect reasonable investment or trading decisions should be released in the manner suggested in the Introduction to these Guidelines. No fully comprehensive list can be prepared of the types of information which should be released under this Section VIII. Some examples, however, of such information may include:

(1) The occurrence of a default in any outstanding indebtedness of the

issuer, including a description of the indebtedness and creditors involved, the circumstances leading to the transaction, the relevant provisions of the authorizing and governing instruments or other documentation, and the amounts of principal and interest involved.

(2) The occurrence of a sudden change or disruption of an apparently long-term nature in services providing revenues which are material to the payment of outstanding securities.

(3) The issuance of additional indebtedness.

(4) A severe natural disaster or precipitous economic change materially affecting the issuer's economy.

(5) A change in a rating by a national rating agency of any outstanding securities of the issuer.