Disclosure Policies and Procedures

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WHY ARE DISCLOSURE POLICIES IMPORTANT?

- **Major focus of SEC**
  - “[C]ities should consider whether their internal controls and systems produce financial reports and disclosure documents that are accurate and complete.” – Director of Enforcement Division in December 2007.
  - *Since 2006, SEC has mentioned disclosure policies and procedures in one form or another in every enforcement action!!*
WHY ARE DISCLOSURE POLICIES IMPORTANT?

- SEC believes they solve several of the problems in the municipal securities market:
  - “Silo” effect
  - “Inside the room” effect
  - Direct and Indirect Political Influence of disclosure
  - Staff turnover
WHAT ARE THE PROBLEMS?

- “Silo” Effect
  - Issuers have been so segregated into silos that information has been stifled.
  - Example…
  - An issuer needs to work across “silo” walls when preparing disclosure.
  - Disclosure Policies and Procedures can solve this problem by intentionally identifying the key places where information and perspective reside and create process that ensures that they are appropriately involved in the process.
WHAT ARE THE PROBLEMS?

- “*Inside the room*” effect
  - Governments are naturally inclined to be sensitive to the perspectives and needs of people who are in the proverbial room.
  - Example…
  - An issuer needs to proactively consider the perspectives and needs of investors even though they may never hear from them or see them.
  - Disclosure Policies and Procedures can solve this problem because they can create intentional points in time when staff is trained and personnel involved in preparing disclosure stop to think and consider the investor’s perspective and needs.
WHAT ARE THE PROBLEMS?

- *Political influence*
  
  • Governments are inundated with political considerations and they can override good disclosure in both intentional but also in very unintentional ways.
  
  • Examples…
  
  • An issuer needs to ensure that the disclosure tells the whole credit story without the kind of “spin” that can be found in political dialogue.
  
  • Disclosure Policies and Procedures can solve this problem because they can create intentional points in time when personnel involved in preparing disclosure stop to think and consider the investor’s perspective and needs in a “no spin” zone.
WHAT ARE THE PROBLEMS?

- **Staff Turnover**
  
  - Many issuers have experienced significant staff turnover that introduce a host of new personnel into the disclosure process.
  - Examples…
  
  - An issuer needs to ensure that its disclosure practices are not so dependent on specific personalities that the practices stop when one or a few people leave.
  
  - Disclosure Policies and Procedures can solve this problem because they can ensure the disclosure practices of the issuer are documented in writing.
WHAT ARE SOME GOOD REASONS WHY ISSUERS SHOULD ADOPT DISCLOSURE POLICIES?

- **Defense of Federal antifraud liability**
  - Federal antifraud liability needs to be predicated on at least “negligence”
- **Opportunity to learn of any gaps in disclosure process in advance**
- **Makes issuer less dependent on personalities and makes disclosure more systematic**
- **Creates a better overall result**
HOW SHOULD YOU CREATE DISCLOSURE POLICIES?

Two General Principles:

- Study your organization for the “problems”
  - To keep pace with what the SEC expects, the key is to see disclosure policies and procedures the way the SEC does:
    - A deliberate process of thinking through your process and identify potential pitfalls and use a formal procedure to proactively address those; and
    - Evaluate whether the problems the SEC has encountered may be present in your organization.

- Start from where you are
  - Imposing a new structure can be as bad as no policy at all; and
  - Working with what you do now and then moving out becomes key.
It is important to start where you are

- Often times issuers have a lot of good procedures that just need a few refinements and starting fresh may in fact lose more than it gains.
- Good disclosure policies and procedures need to be organic and intuitive to an issuer so that they will actually follow them.
- Following a form can just impose a new structure on top of your existing structure.
START FROM WHERE YOU ARE

- **A simple approach**
  - Write down what you do.
  - As yourself the following questions:
    - Are all the people who should be involved appropriately involved?
    - Do people talk with each other about the disclosure in the right contexts and the right times and about the right topics?
    - Do our people know what they are doing?
    - Do we document what we do?
  - Make appropriate enhancements and have the policy adopted.
KEY ELEMENTS OF A DISCLOSURE POLICY

- **Make sure it is clear who is responsible for what**
  - Disclosure coordinator
  - Disclosure committee

- **Horizontal and expert review**
  - Are all the right people within the issuer involved with the disclosure process and reviewing what they should?

- **Vertical review**
  - Are people with the right positions of authority appropriately involved?

- **Disclosure practices committee**
  - Are the right people and departments within the issuer getting together to talk about disclosure in the right kinds of ways?

- **Documentation**

- **Training**
Questions?