

# INTERNATIONAL BRIDGE, TUNNEL AND TURNPIKE ASSOCIATION

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# **Investor Relations:**

**Building Understanding and Trust  
over the Long Haul**

# Purpose for Investor Relations Website

- a. An investor relations website (an "IR Website") essentially serves as a portal for all things of interest to an Issuer's investor community.
- b. It is important to note that the use of IR Websites became popular prior to the advent of the Municipal Securities Rulemaking Board (the "MSRB") establishing its Electronic Municipal Marketplace Access system ("EMMA") as the "one-stop shop" for municipal securities disclosure.

# Content Commonly Found on Investor Relations Websites

Copies of or links to:

- a. Official Statements.
- b. Overviews of Bond Programs.
- c. Descriptions of Bank Loans.
- d. Comprehensive Annual Financial Reports.
- e. Annual Continuing Disclosure Reports.
- f. Annual Budgets.
- g. Debt, Investment and/or Swap Policies.
- h. Material Litigation updates.
- i. Legislative updates.
- j. Administrative updates.
- k. The content of each Issuer's IR Website can be as broad or narrow as the Issuer desires.

# Difference Between Required and Voluntary Disclosure

## Required Disclosure:

### Rule 15c2-12

- a. Governs the provision of mandatory continuing disclosure for (i) annual financial and operating data, of the type presented in the official statement, and (ii) notices of certain enumerated material events.
- b. Rule 15c2-12 Exemptions
  - (i) does not apply to a primary offering of municipal securities in authorized denominations of \$100,000 or more, if such securities:
    - (1) are sold to no more than 35 persons each of whom the participating underwriter has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of the prospective investment and is not purchasing for more than one account or with a view to distributing the securities; or
    - (2) have a maturity of nine months or less.

# Difference Between Required and Voluntary Disclosure

## Voluntary Disclosure:

- a. Applies to data and information that an Issuer provides that is not required under Rule 15c2-12 or Rule 10(b)5.
- b. Usually, there is not an initial duty to disclose the information.

# Who is Responsible for Maintaining the Investor Relations Website?

- a. This is question of great practical importance.
- b. Issuers need to have a plan with respect to who is going to be responsible for producing, maintaining and the uploaded content.

# Is It Current?

- a. It is critical to make clear the date as of which the information provided on the IR website speaks.
- b. Issuer's need to maintain a standard practice of periodically reviewing the information provided on their IR Website and confirming the information provided is complete, up to date and doesn't conflict with information published elsewhere.



# To Link or Not To Link?

- a. While helpful, Issuer's need to be very cautious about providing links to information on their IR website.
- b. Employ a disclaimer advising viewers that they are leaving the IR Website and that the Issuer does not accept responsibility for the content provided on the linked website.
- c. If possible, just repost the linked information on your IR Website to avoid the need to monitor a third-party website and risk additional liability.
- d. The main concern is that you are providing the linked information as part of the set of information you are providing to the investor community – in connection with the purchase and sale of securities.

# Disclaim, Disclaim, Disclaim

- a. As mentioned above, the use of disclaimers does not guarantee there will be no chance for liability.
- b. Elements of a disclaimer for an IR website:
  - i. Declaration that the information contained on the website is not an offering document and is not provided as an offer to sell securities;
  - ii. Establish the timing of the information provided;
  - iii. Disclaim any implication of updated information or an obligation or commitment;
  - iv. Limitation on liability; and
  - v. Viewer acknowledgement.
- c. Where to place the disclaimers:
  - i. Welcome page of the IR Website;
  - ii. Jump pages to linked materials.

# Rule 10b-5 of the Securities Exchange Act of 1934

- a. Rule 10b-5 prohibits the employment of manipulative or deceptive devices. The Rule specifically, provides that:
  - (i) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange:
    - (1) To employ any device, scheme, or artifice to defraud,
    - (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
    - (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,
  - (ii) in connection with the purchase or sale of any security.
- b. The characterization of an activity or disclosure being "in connection with the purchase or sale of any security" is generally broadly construed.
- c. Even though there is not a duty to provide the information contained in an IR Website, Issuer's must make sure that the information is not misleading or materially false.

# Hot Topics

SEC investigation of whether underwriters are fulfilling their obligations to determine whether issuers are complying with their continuing disclosure undertakings.

SEC charges against City of Harrisburg, Pa. of securities fraud for making misleading public statements when its financial condition was deteriorating.

# But, What About EMMA?

- a. As mentioned above, IR websites became popular long before the MSRB established EMMA and made it the required repository for municipal issuers continuing disclosure data.
- b. EMMA has become the one stop shop for all things related to municipal securities disclosure.
- c. The MSRB has indicated that EMMA will likely begin providing Issuer homepages that will mirror and/or rival Issuer's IR websites.
- d. With or without an evolution to Issuer homepages on EMMA, Issuers have found that EMMA is an excellent alternative to maintaining a stand alone IR Website.