

# SESSION SIX

## Initial Disclosure and Legal Documents



**JACQUELYNNE JENNINGS**

*Partner*

ArentFox Schiff LLP

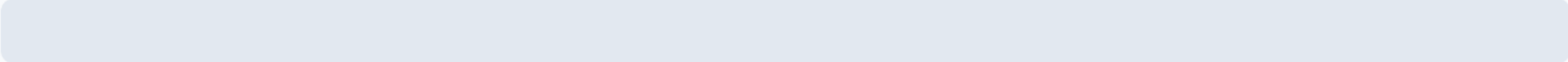
**SAMUEL SMALLS**

*Treasury and Debt Manager  
Metropolitan Water District  
of Southern California*



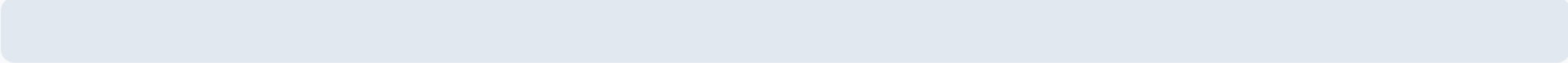
# How often does your agency issue debt?

Annually



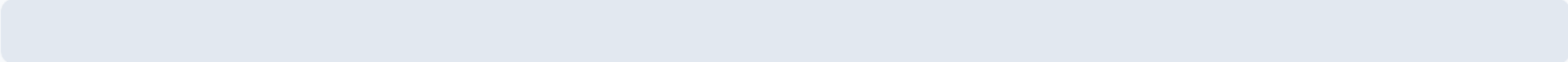
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Every other year



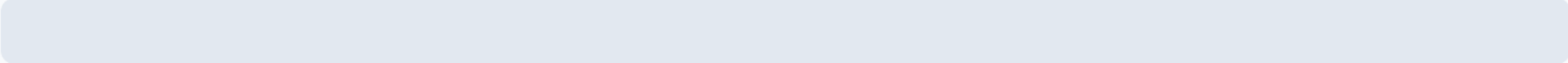
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Less than once every five years



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Other



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# Overview of ArentFox Schiff

- ArentFox Schiff LLP is internationally recognized in core industries where business and the law intersect.
- With offices in Boston, Chicago, Los Angeles, New York, San Francisco, and Washington, DC, and more than 650 lawyers and policy professionals, ArentFox Schiff provides strategic legal counsel to clients that range from Fortune 500 corporations and start-ups, to state, local, and foreign governments, trade associations, and private individuals.
- Our attorneys know that being Smart in Your World isn't just about having great legal skills. It means knowing your business, your industry, and your goals — and using that insight to solve challenges creatively and efficiently. Through decades of service, our attorneys have understood that hard work and talent are just a starting point for being considered a premier law firm, a distinction that ArentFox Schiff has earned from The American Lawyer, Chambers USA, and Legal 500.
- As one of the most diverse general practice law firms in the country, ArentFox Schiff has roots in government service, a focus on legal excellence, and a commitment to the administration of justice. Our lawyers have consistently distinguished themselves as leaders in pro bono representation, while many continue to play prominent roles in public service.
- ArentFox Schiff is proud of its reputation for understanding our clients' business, their industry, and their world.

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# Overview of Metropolitan Water District of Southern California



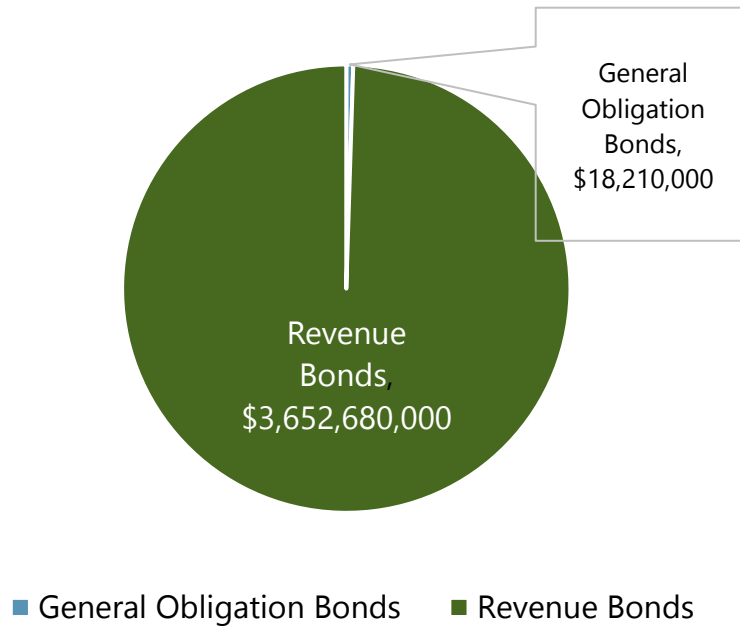
- Metropolitan (or MWD) was formed in 1928 pursuant to a state act to provide regional water supply to Southern California
- MWD is a California regional planner, owner, operator and wholesale distributor of water
- Serves 19 million people across six Southern California counties
- We are a voluntary cooperative of 26 member agencies
- We are governed by a 38-member board of directors, comprised of representatives of our Member Agencies
- MWD is the largest distributor of treated drinking water in the U.S.

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# Overview of Metropolitan's Debt Program



MWD Debt by Type (as of July 1, 2024)



- As of July 1, 2024, Metropolitan had a total of \$3.7 billion of total debt outstanding.
- Metropolitan issues debt to fund a portion of its capital infrastructure investments.
- Metropolitan manages the amount of debt leveraged on its balance sheet through PAYGO targets at roughly 45% of total CIP expenditures.
- Of the revenue bond debt outstanding, approximately 75% is on the senior lien, 25% on the subordinate lien.
- While almost 80% of our debt is traditional fixed-rate, the remaining portion is comprised of variable-rate, synthetically-fixed debt (hedged by our swap portfolio), and put bonds (3yr to 7yr terms)

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# Preliminary Considerations

- **What** is being financed?
- **What** law authorizes the financing?
- **How** will the financing be structured?
- **What** is the source of funds to repay the borrowing?
- **Who** is the issuer's representative that will be responsible for ongoing compliance?

# The Project

- Summary Description of the Project
  - ❖ Size, Location, Costs
  - ❖ Sources of Funding for the Project
  - ❖ Contractor and type of Contract
- Required Approvals and Status thereof
- Expected Construction Commencement and Completion Dates





# Getting Started

## WHO?

Issuer's Financing Team

## WHAT?

Official Statements / Offering Memoranda

## WHY?

Investors in municipal securities have rights under federal securities law





# Assemble the Financing Team

**Issuer Team + Other Professionals = Issuer's Financing Team**

## **Issuer Team**

- Issuer
- Department Representatives
- Issuer's Counsel
- Bond Counsel
- Disclosure Counsel
- Municipal Advisor
- Feasibility Consultant
- Dissemination Agent
- Appraiser

## **Other Professionals**

- Trustee / Paying Agent / Fiscal Agent
- Trustee's Counsel
- Underwriter
- Underwriter's Counsel
- Securities Repository (DTC)
- Credit Enhancer
- Rebate Consultant
- Borrower and Borrower's Counsel (Conduit Transaction)
- Verification Agent (Refundings)
- Remarketing Agent (Variable Rate Transaction)
- Letter of Credit Bank (Variable Rate Transaction)

# Why Provide Disclosure?

- **Securities Act of 1933 - "Truth in Securities Law"**
  - ❖ Investors must be provided with financial and other significant information for securities prior to sale
  - ❖ Section 17(a) – **Antifraud Rule** – Prohibits deceit, misrepresentations, and fraud in sale of securities
- **Exchange Act of 1934**
  - ❖ Created the SEC and conferred broad authority to the SEC to register, regulate, and oversee securities transactions and participants; also requires periodic filings of relevant data
- **Section 10(b)**
  - ❖ Prohibits use of manipulative or deceptive acts in connection with purchase or sale of securities
- **Rule 10b-5**
  - ❖ Prohibits making untrue statements of material facts or omitting to state material facts that are necessary to make the statements in the offering document not misleading



# Application of Disclosure Laws

Whenever the issuer “speaks to the market”

Examples:

- Primary disclosure in Official Statements and Offering Memoranda
- Annual Reports
- Event Notices and Voluntary filings pursuant to Rule 15c2-12
- Investor Communications
- Other public statements made by the Issuer and its officials, including press releases, public statements, interviews, website, social media, and speeches
- Reports delivered to governmental agencies
- Issuer statements made that are reasonably expected to reach investors are also subject to antifraud provisions

# What is an Official Statement?

- ❖ A document prepared by or on behalf of a state or local government in connection with the issuance of municipal securities
- ❖ An official statement is similar to a prospectus that is used in corporate securities offerings
- ❖ Provides material information to investors about the transaction

# Anatomy of the Official Statement

*Material information needed by investors to make a decision to purchase the securities, including:*

- Introduction
- Plan of Finance
- Sources and Uses of Funds
- Project Description
- Security for the Bonds and Sources of Payment
- Capital Improvement Plan
- Issuer Financial and Relevant Operating Information
- Risk Factors
- Absence of Material Litigation
- Continuing Disclosure Compliance
- Appendices
  - ❖ Audited Financial Statements
  - ❖ Economic, Demographic, and Statistical Data
  - ❖ Form of Bond Opinion
  - ❖ Form of Continuing Disclosure Undertaking
  - ❖ DTC Disclosure
  - ❖ Third Party Documents and Certifications



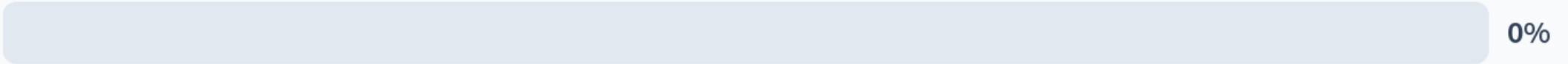
## Has your agency adopted written disclosure policies and procedures?

Yes



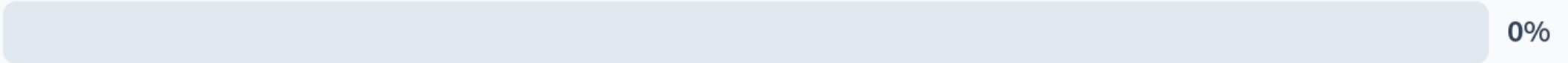
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No



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Still a work in progress, but soon



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# Disclosure Policies and Procedures

- Provides general guidelines for the preparation of initial and continuing disclosure, including:
  - ❖ Identifying members of the Disclosure Working Group
  - ❖ Roles and responsibilities of Disclosure Working Group members for preparing disclosure
  - ❖ Defining a process for drafting, reviewing, and finalizing all disclosure documents
  - ❖ Identifying person(s) responsible for providing final sign-off for prepared disclosure
  - ❖ Empowering staff at all levels to provide input
  - ❖ Providing legislative body sufficient time for review and comment
  - ❖ Providing for periodic review and update of disclosure policies and procedures



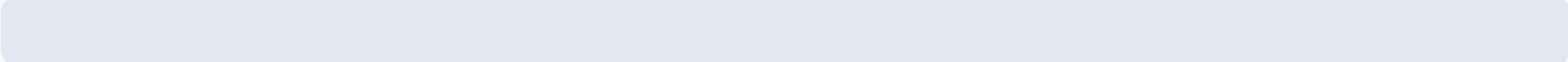
# Disclosure Policies and Procedures – (cont. 2 of 2)

- Incorporates best practices
- Focuses on the “big picture”
- Encourages disclosure of the good **and** the bad
- Retains knowledgeable counsel and professionals
- Provides appropriate and regular training to officials and staff
- Is reviewed and revised periodically by the disclosure working group



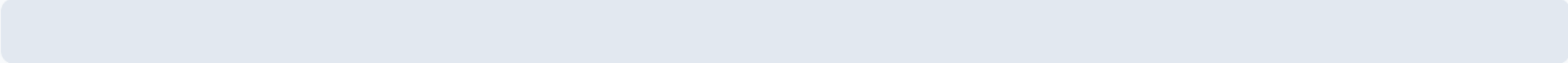
# Has your agency established a disclosure working group?

Yes



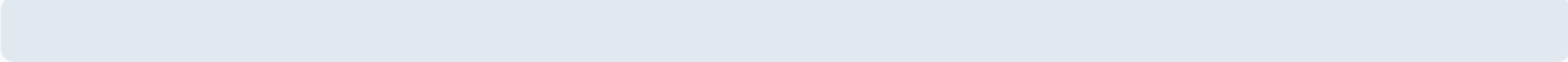
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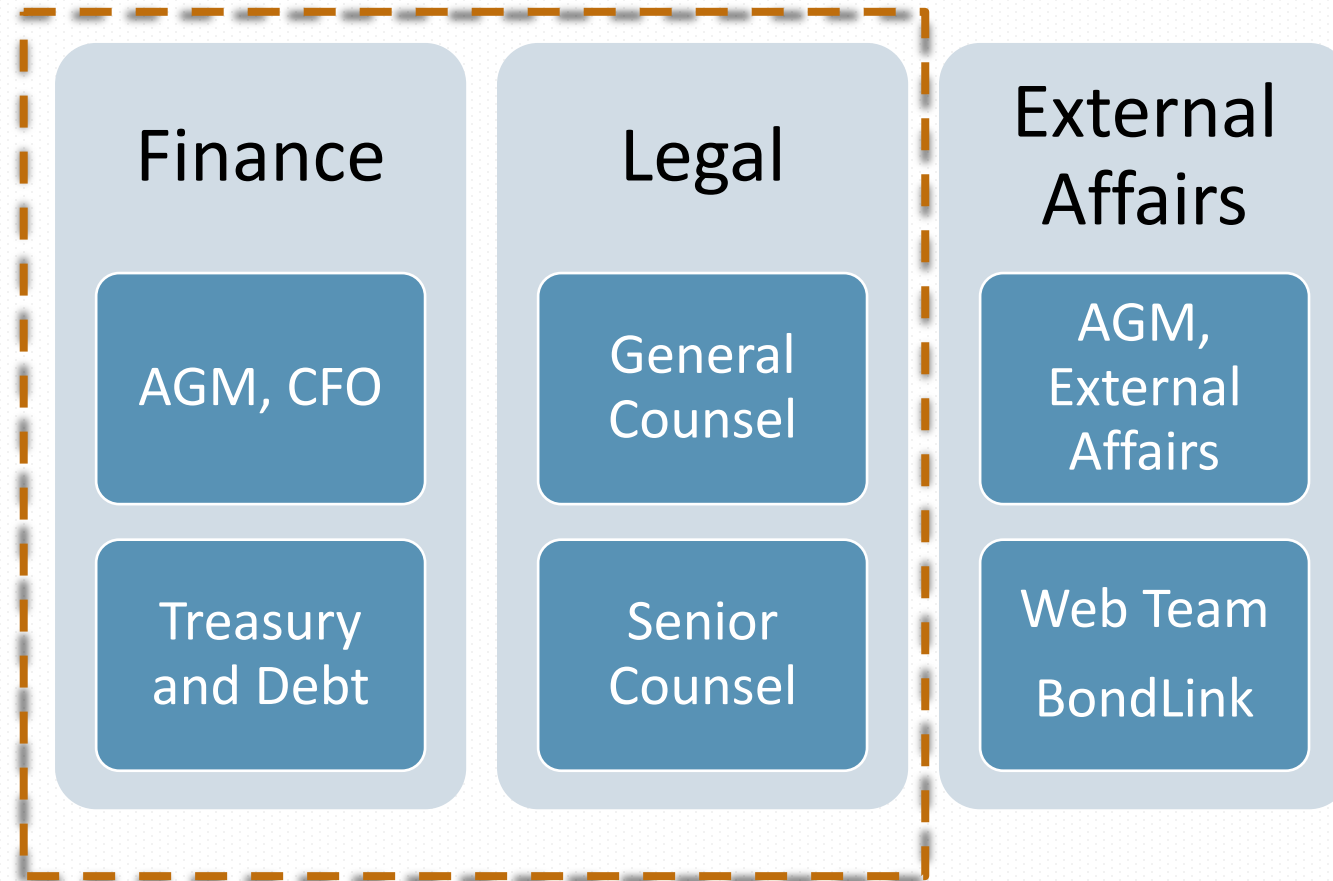
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# Metropolitan's Disclosure Working Group

- Metropolitan's Finance team partners with its Legal team (internal and external) through an official Disclosure Working Group to ensure we provide accurate and timely responses related to our public disclosure requirements.



*In addition, Finance and Legal coordinate with our External Affairs team to make relevant information available on our website as well as our customized Investor Relations portal.*



# Issuer Considerations

- Disclosures in the OS are important to protect the issuer
  - ❖ Include material risks that may arise related to the revenues, project, industry, demographics, etc.
- Development of OS
  - ❖ Work with the Issuer's Counsel to prepare document
  - ❖ Review all sections prepared by Disclosure Counsel from publicly available documents closely (read everything to ensure authenticity and accuracy)
  - ❖ Discuss industry-specific risks and what should be included in OS
  - ❖ Slow down a transaction when necessary or let Disclosure Counsel know if information is not yet available and when it is expected to be available (e.g. audited financial statements, pledged revenues, etc.)



# Issuer Considerations – (cont. 2 of 3)

## ➤ Possible Consequences of Inadequate Disclosure

- ❖ SEC Investigations; Enforcement actions
- ❖ Adverse publicity
- ❖ Personal liability and fines
- ❖ Lifetime bars from involvement in future municipal finance transactions; criminal charges against issuer officials
- ❖ Injunctions; Requirement to retain professionals
- ❖ Reduced Market access
- ❖ Imposition of new procedures and outside oversight to settle SEC actions
- ❖ Ratings downgrades, can trigger increased credit/liquidity provider fees



# Issuer Considerations – (cont. 3 of 3)

➤ Guidance from SEC Investigations:

- ❖ Orange County, CA (1996) – Failure of Board to review official statement
- ❖ County of Nevada, CA (1998) and Town of Ramapo, NY (2016) – Misleading financial information
- ❖ Massachusetts Turnpike Authority, MA (2002) - Failure to disclose construction risks
- ❖ State of New Jersey (2010) – Failure to disclose underfunding of state’s two largest pension plans in 79 offerings from August 2001 through April 2007
- ❖ City of Harrisburg, PA (2013) – Fraudulent public statements
- ❖ Beaumont Financing Authority, CA (2017) – False Statements in official statements
- ❖ Town of Sterlington, LA (2022) – Securities Fraud
- ❖ Rochester, NY (2022) – Use of outdated financial statements in official statement and failure to disclose the current financial status of issuer

# Conclusion

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- Disclosure evolves to reflect current circumstances and concerns
- Approach each financing with “fresh eyes”
- Frequent issuers should review Official Statement for “disclosure bloat”
- Raise concerning issues with your Issuer Team
- Make sure that all the right people are in the room
- Don’t ignore obligations under securities laws
- Tell the full story

# Additional Resources

- California Debt and Investment Advisory Commission [www.treasurer.ca.gov/cdiac](http://www.treasurer.ca.gov/cdiac)
- Government Finance Officers Association [www.gfoa.org](http://www.gfoa.org)
- Municipal Securities Rulemaking Board [www.msrb.org](http://www.msrb.org)
- National Association of State Auditors, Comptrollers and Treasurers [www.nasact.org](http://www.nasact.org)
- National Federation of Municipal Analysts [www.nfma.org](http://www.nfma.org)
- Securities Industry and Financial Markets Association [www.sifma.org](http://www.sifma.org)

# QUESTIONS?



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