

NORTH COUNTY FIRE PROTECTION DISTRICT

330 S. Main Avenue • Fallbrook, California 92028-2938 • Phone: (760) 723-2005 • Fax: (760) 723-2072 • Web: www.ncfire.org

BOARD OF DIRECTORS

CINDY ACOSTA
JEFFERY EGKAN
DAVID KENNEDY
KENNETH E. MUNSON
JOHN VAN DOORN

STEPHEN J. ABBOTT - Fire Chief/CEO - sabbott@ncfire.org
ROBERT H. JAMES - District Counsel - roberthjameslaw@gmail.com
LOREN A. STEPHEN-PORTER - Executive Assistant/Board Secretary - lstephen@ncfire.org

TO: BOARD OF DIRECTORS
FROM: STEPHEN ABBOTT, FIRE CHIEF/CEO
SUBJECT: BOARD MEETING PACKAGE
DATE: DECEMBER 1, 2020

Enclosed is your Board package for the Regular [December Training](#) Board Meeting. We have tried to include the information you will need to participate in the training. **Due to the Covid-19 return to Purple Tier, pursuant to the Declarations by Governor Newsome and the County of San Diego and until further notice, all Board Meetings will be TELEPHONIC ONLY.** Instructions for participation are enclosed.

Please note this month's meeting is scheduled for [Tuesday, December 1, 2020](#), beginning sharply at **9:00 a.m.**

Thank you for your continuing patience with the Teleconferencing. North County Fire Protection District will return to the regular meeting location at FPUD as soon as allowed and it is sage to do so.

To ensure full training is presented to required reporters, please call Loren in advance of the meeting if you will be unable to attend. She may be reached at (760) 723-2012.

Respectfully,



Stephen Abbott
Fire Chief/CEO



PROUDLY SERVING THE COMMUNITIES OF FALLBROOK, BONSALE AND RAINBOW

DUTY ~ INTEGRITY ~ RESPECT



NORTH COUNTY FIRE PROTECTION DISTRICT

AGENDA FOR BOARD ORIENTATION & ETHICS TRAINING MEETING DECEMBER 1, 2020 - 9:00 A.M.

DUE TO THE COVID-19 OUTBREAK AND PURSUANT TO THE DECLARATIONS BY GOVERNOR NEWSOME AND THE COUNTY OF SAN DIEGO, UNTIL FURTHER NOTICE, ALL BOARD MEETINGS WILL BE TELEPHONIC ONLY.

The Board packet is available on line at:

[HTTPS://WWW.NCFIRE.ORG/2020-12-01-BOARD-TUESDAY-DECEMBER-1-2020-ORIENTATION-EDUCATIONAL-MEETING](https://www.ncfire.org/2020-12-01-board-tuesday-december-1-2020-orientation-educational-meeting)

PUBLIC ACTIVITIES AGENDA

For those joining us for the Public Activities Agenda, please feel free to depart at the close of the agenda. We invite you to stay for the remainder of the business meeting.

CALL TO ORDER ROLL CALL

1. PUBLIC COMMENT — VICE PRESIDENT VAN DOORN

- **STANDING EVENT:** Members of the Public may directly address the Board of Directors on Events of interest to the Public (pgs.) provided no action will be taken on non-agenda Events. The Board President may limit comments to three minutes per speaker (Board of Directors Operations – Elections, Officers and Terms SOG § 4.2.6.3.).

DISCUSSION AGENDA

No action shall be undertaken on any Discussion Event. The Board may: acknowledge receipt of the information or report and make comments; refer the matter to Staff for further study or report; or refer the matter to a future agenda.

2. MUNICIPALITIES IN THE SEC'S CROSSHAIRS: DISCLOSURE RESPONSIBILITIES AND BEST PRACTICES IN AN ERA OF HEIGHTENED SCRUTINY

9:00 A.M. – 10:00 (1 HOUR)

EDUCATION PRESENTATION BY

- REED T.C. GLYER, SHAREHOLDER, STRADLING, YOCCA, CARLSON & RAUTH
PRESENTATION TO BEGIN SHARPLY AT 9:00 A.M. VIA TELECONFERENCING.

Contact the following number: 1-408-419-1715. Meeting ID is 834 677 344, followed by #.

Test site for Blue Jeans is available if you are unfamiliar with Blue Jeans. Use this link:
<https://bluejeans.com/111>

3. DISTRICT OVERVIEW BY FIRE CHIEF/CEO STEPHEN ABBOTT AND STAFF

4. ETHICS IN PUBLIC SERVICE AND THE BROWN ACT

EDUCATION PRESENTATION BY

- KEVIN CHICAS, ESQUIRE, FROM LIEBERT CASSIDY WHITMORE
PRESENTATION TO BEGIN SHARPLY AT 12:00 P.M. VIA TELECONFERENCING.

● COMMENTS/QUESTIONS:

ADJOURNMENT

SCHEDULED MEETINGS

The next regularly scheduled Board meeting is: Tuesday, **December 8, 2020**, 4:00 p.m. at Telephonic.

Note: The Americans with Disabilities Act provides that no qualified individual with a disability shall be excluded from participation in, or denied the benefits of, District business. If you need assistance to participate in this meeting, please contact the District Office 72 hours prior to the meeting at (760) 723-2012.



AGENDA FOR BOARD ORIENTATION & ETHICS TRAINING MEETING

NOVEMBER 27, 2020

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CERTIFICATION OF AGENDA POSTING

"I certify that this Agenda was posted in accordance with the provisions of the Government Code § 54950 et. seq. The posting locations were: [1] the entrance of North County Fire Protection District Administrative Offices, [2] Fallbrook Public Utility District Administrative Offices and [3] the Roy Noon Meeting Hall; [4] District's website at www.ncfire.org. The Agenda was also available for review at the Office of the Board Secretary, located at located at 330 S. Main Avenue, Fallbrook (760) 723-2012. Materials related to an item on this Agenda submitted to the District after distribution of the agenda packet, are available for public inspection in the Office of the Board Secretary, during normal business hours or may be found on the District website, subject to the Staff's ability to post the documents before the meeting. The date of posting was **November 27, 2020.**"

Board Secretary Loren Stephen-Porter:

Loren A. Stephen-Porter

Date:

November 27, 2020

Municipalities in the SEC's Crosshairs: Disclosure Responsibilities and Best Practices in an Era of Heightened Scrutiny



North County
Fire Protection District

Prepared by:
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Public Statements by District Officials

- Generally, no requirement to speak.
- When a municipality elects to “speak to the market,” it must be accurate and complete.
- Examples of public statements:
 - Preliminary official statements and official statements;
 - Continuing disclosure filings;
 - CAFRs;
 - Press releases and public statements by officials, such as State of the District addresses.

Indirect Regulation by the SEC

- Municipal issuers are subject to the SEC's antifraud rules even though they do not have to register securities and are exempt from the SEC's periodic reporting requirements.
- “When a municipal issuer releases information to the public that is reasonably expected to reach investors and the trading markets, such disclosure is subject to the antifraud provisions.” (SEC 2012 Report on Municipal Issuers)
- “The fact that [statements] are not published for purposes of informing the securities markets does not alter the mandate that they not violate antifraud proscriptions.” (March 1994 Statement of the Commission Regarding Disclosure Obligations of Municipal Securities and Others)

Securities Violations Under Rule 10b-5

- **Rule 10b-5:** It shall be unlawful for any person . . . 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, in connection with the purchase or sale of any security.
- Intentional or reckless act is required.
- Under **Section 17(a)** of the Securities Act, the SEC can charge securities fraud under a negligence standard (“knew or should have known”).

The Question of Materiality

- The materiality standard remains opaque, but it is clear that the SEC staff's bar for materiality is very low.
- Materiality is defined as:
 - a substantial likelihood that a reasonable bond investor would consider it important in making an investment decision; or
 - viewed by a reasonable investor as having significantly altered the “total mix” of available information.
- In practice, SEC staff takes a subjective, hindsight view of materiality.



Reliance on Professional Services

- Issuers and principals are ultimately accountable for the accuracy of statements of fact about the issuer and cannot delegate this responsibility.
- In the event of a misstatement, reliance on advice of professionals will only serve as a defense under limited circumstances.
- *Presence of counsel* does not equate to *advice of counsel* (a defense requiring a privilege waiver): SEC generally requires a direct request for advice on a particular disclosure topic.

SEC Enforcement Actions

- Municipalities Securities and Public Pensions Unit
- SEC expects nearly strict liability for compliance. Recent cases have sought:
 - Financial penalties;
 - Individual accountability (control person liability);
 - Parallel criminal charges;
 - Admission of wrongdoing;
 - Public statements outside of offering materials or continuing disclosures.

SEC Investigations – An Inside Look

- An investigation is NOT a litigation;
- Broad document subpoenas;
- Team of lawyers and accountants with no automatic protections offered by a court;
- No designated timeline or budget;
- Personal subpoenas issued to officials and staff;
- Cooperation and credibility are paramount.

SEC Settlements and the Wells Process

- Terms of settlement may take numerous forms:
 - Generally “neither admit nor deny” but may require an admission;
 - Cease and Desist Order;
 - Financial penalty and/or disgorgement;
 - Industry bar for individuals;
 - Compliance undertakings (including consultants and monitors);
 - Cooperation against others under investigation;
 - Future disclosure obligations.





North County Fire Protection District

Disclosure Responsibilities
under the
Federal Securities Laws

June 25, 2020

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Why Is Disclosure Necessary?

- North County Fire Protection District issues securities in the public capital markets
- Investors in municipal securities have rights under federal securities laws
- All “material” information must be disclosed

The Securities Act Of 1933

- 1933 Act has two substantive rules:
 - Registration requirement
 - Antifraud rule
- Municipal securities are exempt from the registration requirement, but are subject to antifraud rule
- Section 17(a)(2) prohibits any person from, directly or indirectly, obtaining money or property by means of any untrue statement of a material fact or by a misleading omission.

Securities Exchange Act Of 1934

Rule 10b-5

- Also contains antifraud provisions
- 1975 amendments to 1934 Act made it clear that antifraud provisions apply to government issuers

Rule 10b5

“It shall be unlawful for any person . . .

- a) To employ any device, scheme or artifice to defraud,
- b) 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”

The “Materiality” Standard

- “[w]hether or not there is a substantial likelihood that a reasonable investor or prospective investor would consider the information important in deciding whether or not to invest.”
- Materiality is determined in context of all the facts and circumstances
- Guidance comes primarily from court decisions and SEC enforcement cases
- SEC has declined to provide advance guidance on materiality

Levels Of Culpability

- Negligence – Failed to meet Prudent Person Test
- Recklessness – Ignored “red flags”
- Intent to defraud – Scinter

When Do Disclosure Rules Apply?

- New offerings
- Annual Report under Rule 15c2-12
- Any other circumstance where an Issuer is “speaking to the market”
 - Applies to an official with responsibility for such disclosures
 - At this time, securities law does not impose a requirement to update or correct any statement previously made, if there is no other reason to be making a statement to the market

Primary Offerings

- A sale of bonds to the public
- Official Statement is offering document to investors – equivalent to prospectus
- Must contain all material information for the particular bond sale
- Official Statement is North County Fire Protection District's document
- Underwriters, municipal advisors and lawyers can help develop the Official Statement but North County Fire Protection District is ultimately responsible for content

Annual Reports

- Annual Reports are due as long as bonds are outstanding
- Includes Audited Financial Statements
- Includes Financial Information identified in Continuing Disclosure Agreement (Adopted Budget, specific tables from Official Statement)
- Consider Rule 10b5 implications – is there more you should be saying?
- When filing Annual Report ask if anything happened since the date of the audited financial reports that has materially impacted the District's financial condition?

What Should Be Disclosed?

- Unlike corporate securities, there is no “line item” set of rules for what goes into an Official Statement
- Starting in 1975, leaders in municipal market created a set of Guidelines for Official Statement content
- Other groups have suggested disclosure for particular market segments
- Look at practices in the industry; recent SEC enforcement actions
- In the end, issuer must use its own good judgment

Disclosure Process

- Seek input from key officials
- Fire Chief and Deputy Chief oversee and coordinate process
- Involve all key staff with relevant information
- Disclosure Counsel helps pull information together and produces a draft Preliminary Official Statement (“POS”)
- Draft POS reviewed by working group and revised prior to submission to Board

Disclosure Process

- Board Members
 - Review key sections of POS related to District and its finances
 - Notify Fire Chief/Deputy Chief of any changes and questions prior to release of POS
- “Due diligence” meeting/call before distribution of POS
- Fire Chief or Deputy Chief deems POS final as of its date before release to investors

Timing Considerations For Bond Sale

- Progression of an offering
 - POS
 - Bond Sale
 - Final OS
 - Closing
- Be mindful of timing of public actions or releases
 - State budget, District budget, budget updates
 - District financial information
 - Events related to pending litigation

Disclosure Topics for Preliminary Official Statement

- Experience of District Management Team
- Tax base
- Pension Plans and OPEBs (GASB 68 and 75)
- Labor negotiations
- Source of District moneys
- Climate/weather issues
- Historical revenues, expenses and coverage
- Multi-year projections
- Capital Improvement Program
- Litigation and investigations
- Impact of State budget on District
- Information on debt – types and amounts

Areas of Emphasis

- Possible impact of next economic downturn
- Status of fund balances and reserves
- Continuing disclosure compliance
- Pension and OPEB liabilities/impact of new assumptions and GASB standards
- Impact of COVID-19

Disclosure Considerations

- Disclosure must evolve to reflect changing circumstances
- Read the disclosure with “fresh eyes”
- If you think something may be a concern, raise the issue with colleagues and the working group
- There are no “stupid questions”
- Political sensitivity and confidentiality considerations are not exceptions to disclosure

S.E.C. Enforcement

- SEC enforcement actions are the primary vehicle to ensure compliance
- SEC has power to bring civil actions or refer to Justice Department for criminal action
- SEC has brought actions against municipal issuers, including individual officers, as well as other participants in the market, such as underwriters, lawyers, advisers, etc.

Consequences of Bad Disclosure

- SEC Investigation – fees for lawyers and consultants
- Adverse publicity
- Reduced market access
- May have to impose new procedures and oversight to settle SEC actions

What Can Go Wrong?

- Orange County – (Board approved Official Statement without review.)
 - Board that authorizes securities is responsible for disclosure
 - Reliance on professionals must be reasonable

“A public official who approves the issuance of securities and related disclosure documents may not authorize disclosure that the public official knows to be materially false or misleading; nor may the public official authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading. When, for example, a public official has knowledge of facts bringing into question the issuer’s ability to repay the securities, it is reckless for that official to approve disclosure to investors without taking steps appropriate under the circumstances to prevent the dissemination of materially false or misleading information regarding those facts.”

What Can Go Wrong? (cont)

- San Diego (Inaccurate disclosure on pension and retiree healthcare liability and errors in financial statements.)

- City commissions a review of its disclosure practices
- Conclusions from review:

“the City’s procedures, policies and practices for disclosure and financial reporting are inadequate in major respects. Undermining the reliability of its public disclosure have been, among other factors, the (1) the City’s excessive reliance on outside professionals to generate its disclosure documents, (2) its lack of procedures to verify the accuracy of those documents and (3) the absence of high-level oversight to judge the clarity and completeness of information provided to the investment markets.”

What Can Go Wrong? (cont)

- State of New Jersey (State fails to disclose material information on two pension plans and specifically underfunding.)
 - Failure left investors unable to evaluate State's financial condition
 - State Treasurer did not read Official Statement
 - State Treasurer had no written policies or procedures relating to review or update
 - State Treasurer did not provide training concerning disclosure obligations

What Can Go Wrong? (cont)

“Treasury had no written policies or procedures relating to the review or update of the bond offering documents. In addition, Treasury did not provide training to its employees concerning the State’s disclosure obligations under the accounting standards or the federal securities laws. Accordingly, the State’s procedures were inadequate for ensuring that material information concerning [the pension plans] or the State’s financing of [the pension plans] was disclosed and accurate in bond offering documents.”

What Can Go Wrong? (cont)

- West Clark Community Schools District (Indiana) – (fraudulent misstatement in a 2007 Official Statement that it was in compliance with its disclosure obligations related to prior bond offerings.)
- The district had not submitted any of the required annual reports or notices for a previous 2005 bond offering, and the underwriter did not conduct adequate due diligence with respect to continuing disclosure compliance.

What Can Go Wrong? (cont)

- State of Illinois – (Omission of material information relating to the unfunded liabilities of its pension system.)

What Can Go Wrong? (cont)

- City of South Miami (Florida) – (**Material misstatements related to the City's compliance with various tax requirements for the bonds.**)

What Can Go Wrong? (cont)

- City of Allen Park (Michigan) – The SEC found that City bond offering documents **used outdated budget information** in offering documents that failed to disclose a known budget deficit of at least \$2 million.

Allen Park - Settlement with the City:

- The City agreed to cease and desist from future securities law violation. No fines were levied against the City, but the City agreed **to adopt written policies and procedures**, to disclose the cease and desist order in any offering in the next two years and to **undertake disclosure training**.

What Can Go Wrong? (cont)

Allen Park - Settlement with the City Administrator and Mayor:

- The City Administrator entered into settlement agreement, which included an order not to violate the federal securities laws in the future and **not to participate in an offering of municipal securities in the future**, but no payment of a fine.
- The Mayor entered into a settlement agreement, which included an order not to violate the federal securities laws in the future, not to participate in an offering of municipal securities and **payment of a \$10,000 fine**.

What Can Go Wrong? (cont)

- Westlands Water District – The SEC found that the Water District bond official statement contained **misleading debt service coverage ratio** information due to **failure to disclose (1) extraordinary accounting transactions and (2) a later adjustment to prior year expenses.**
- Westlands Water District – Settlement:
 - SEC’s cease and desist order found violation of Section 17(a)(2) of the Securities Act.
 - District ordered to **pay \$125,000.**
 - General Manager ordered to **pay \$50,000 from personal funds.**
 - Assistant General Manager ordered to **pay \$20,000 from personal funds.**

Summary of Recommended Actions

- Schedule periodic training
- Review policies and procedures from time to time
- Make sure that responsible officials are familiar with disclosure
- Review the entire POS
- Seek information and ask questions of the officials, employees and professionals who supplied information to be included in the POS
- Ask follow up questions to determine the reasonableness of any assumptions or estimates that were used in the POS