# POST ISSUANCE BOND COMPLIANCE

Kansas Association of School Business Officials
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### What are the regulators asking?

Are you following the securities and tax rules that apply to municipal bonds, both at the time the bonds are issued and during the entire life of the bond issue?

Can you prove it?

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### 5 Key Aspects of "Proving It"

- #1 Monitor ongoing federal tax and securities law requirements
  - Adopt and implement Written Post-Issuance Compliance Procedures
- #2 Account for the investment of bond proceeds
  - Complete Arbitrage Rebate Computations on schedule
- #3 Account for the expenditure of Bond proceeds
  - Complete a Final Written Allocation
- #4 Account for the use of Bond-financed assets
  - Complete an Annual Compliance Questionnaire
- #5 Account to Bondholders
  - File Annual Report and other Event Notices with MSRB



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### **Overview**

- Spending Bond Proceeds
  - Final Written Allocation
- Use of Bond-Financed Assets
  - Annual Compliance Questionnaire
- Continuing Disclosure

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### **Spending Bond Proceeds**

- State Law Rule
  - Only facilities/equipment for <u>school district</u> <u>purposes</u>
    - Primarily used by the District for educational or extracurricular activities sponsored by District

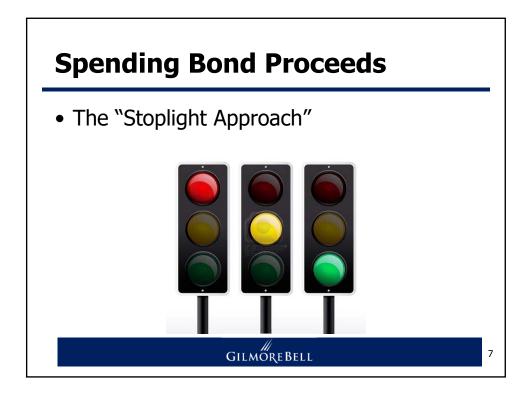
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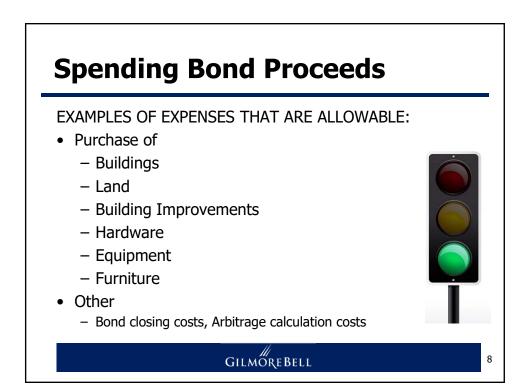
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### **Spending Bond Proceeds**

- Federal Tax Rules
  - Generally only capital expenditures
    - Some limited exceptions
  - Keeping appropriate documentation is very important
    - Sometimes this is the difference between eligible and ineligible expenditures
    - Must be able to later identify bond-financed assets
      - Payee, amount, date of payment, description of asset
      - Placed in service date
      - Expected useful life of asset

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# **Spending Bond Proceeds**

EXAMPLES OF EXPENSES THAT ARE NOT ALLOWABLE:

- Annual maintenance costs
- Online subscription purchases
- Subscription based software
- Training costs



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# **Spending Bond Proceeds**

EXAMPLES OF EXPENSES THAT SHOULD BE DISCUSSED BEFORE APPROVING:

- Personnel Costs
- Software
- Moving & storage costs
- Consultants
- Warranty/Maintenance



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### **Spending Bond Proceeds**

- Other considerations:
  - Some legally permitted expenditures may not be in the District's financial best interests
  - Useful life of assets financed with a specific bond issue can effect the permitted maximum repayment term of the bonds
  - Is it worth the time necessary to create the paper trail?
  - If the expense is ongoing, where will funds come from after bond proceeds are gone?

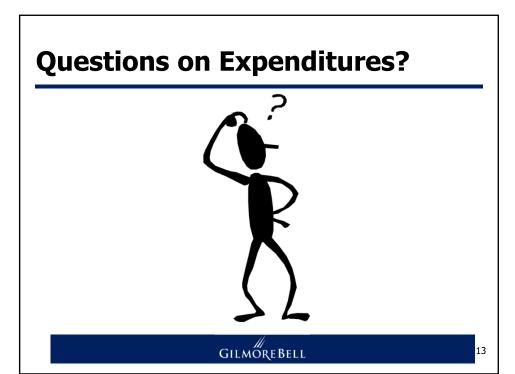
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### **Documenting Expenditures**

- Final Written Allocation
  - Summary of financed assets with back up general ledger detail
  - Complete within 18 months of placed in service date of all bond-financed assets (i.e., within 18 months of date all bond proceeds are spent)
  - Should have all bond proceeds spent by 5 years from bond issue date

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### **Use of Bond-Financed Assets**

 Must be able to identify bond-financed assets for life of bond issue + any refunding bond issue + 3 years. Why?

IRS rules restrict the use of bond-financed assets during <u>entire term of bonds</u> (<u>including any refunding issue</u>)

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### **Use of Bond-Financed Assets**

- Can be a problem if both:
  - Private Business Use; and
  - Payments to District related to the private use
- Exceptions to Private Use Rules:
  - Use by another governmental entity
  - Use by general public
  - Short-Term Use (less than 50 days)
  - Incidental Use

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### **Use of Bond-Financed Assets**

- What kinds of uses are you concerned about?
  - Sale or lease of property purchased with bond funds
    - Sale of buildings/furniture/equipment
    - Facility Usage YMCA, Soccer Club, Coaches' use of buildings, church/community groups
    - Cell towers

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### **Use of Bond-Financed Assets**

- What kinds of uses are you concerned about?
  - Management/Operating Arrangements
    - PTO/PTA/Boosters running concession stands
    - Bus barns leasing to outside company for transportation contract

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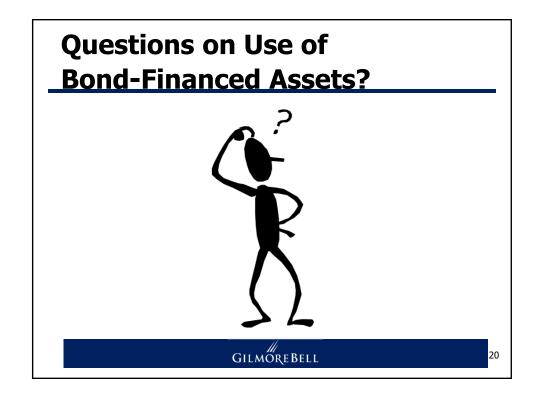
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### **Use of Bond-Financed Assets**

- What kinds of uses are you concerned about?
  - Research Contracts
    - Consulting contracts with research teams
  - Other arrangements that convey special legal rights
    - Corporate signs hanging in gyms, stadiums
    - Naming rights on buildings and/or stadiums
    - Vending Machines/Pepsi or Coke Contracts

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# Annual Compliance Questionnaire/Checklist | Superior |



### Who is the SEC?



The Securities and Exchange Commission has five Commissioners who are appointed by the President of the United States with the advice and consent of the Senate. Their terms last five years and are staggered so that one Commissioner's term ends on June 5 of each year. To ensure that the Commission remains non-partisan, no more than three Commissioners may belong to the same political party. The President also designates one of the Commissioners as Chairman, the SEC's top executive.



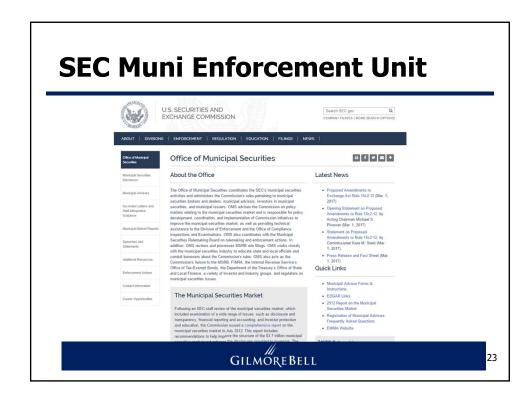
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### What does the SEC do?

### Quotes from the SEC website:

- Protect investors
- Make sure investors have access to certain basic facts about an investment prior to buying it, and so long as they hold it.
- Encourage the steady flow of <u>timely</u>, <u>comprehensive</u>, and <u>accurate</u> information so people can make sound investment decisions.
- First and foremost, the SEC is a law enforcement agency.

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# **Continuing Disclosure – Key SEC Rules: Anti-Fraud**

The Issuer is 100% responsible for what is said in Official Statements, Continuing Disclosure Reports and other communications to investors.

- No "material misstatement or omission."
- Financing professionals (Bond Counsel, Underwriters, Financial Advisors) can help, but using experts does not limit the District's responsibilities.

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# Continuing Disclosure – West Clark Schools (2013)

SEC Charges School District and Muni Bond Underwriter in Indiana With Defrauding Investors

### FOR IMMEDIATE RELEASE

2013-13

Washington D.C., July 29, 2013 — The Securities and Exchange Commission today charged a school district in Indiana and its municipal bond underwriter with falsely stating to bond investors that the school district had been properly providing annual financial information and notices required as part of its prior bond offerings.

"This is the first time the SEC has charged a municipal issuer with falsely claiming in a bond offering's official statement that it was fully compliant with the annual disclosure obligations it agreed to in prior offerings, and an underwriter and its principal for not doing the necessary research to attest to the truthfulness of that claim," said Andrew Ceresney, Co-Director of the Division of Enforcement. "West Clark Community Schools defrauded bond investors by leading them to believe that it had provided the annual financial information contractually required in a prior bond offering, when in fact for five years they failed to submit the required information. This case demonstrates that we will be vigilant in making sure municipal issuers and underwriters comply with their obligations."

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# **Continuing Disclosure – Communicating with Investors**

- 1. When bonds are issued
  - Official Statement
- 2. Annual updates as long as the Bonds are outstanding
  - Continuing Disclosure Agreement/Undertaking
    - Audited Financial Statements
    - · Operating Data
- 3. Event Notices
  - Payment defaults, prepayment of bonds, rating changes, other listed key financial-related events

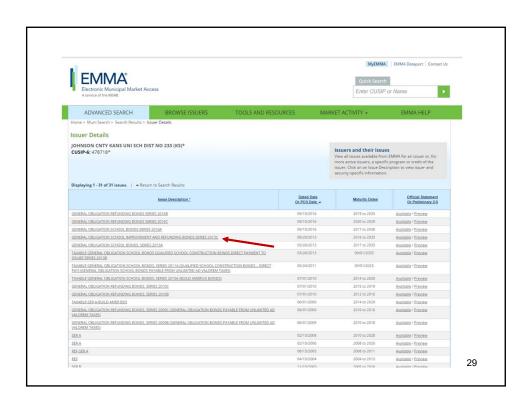
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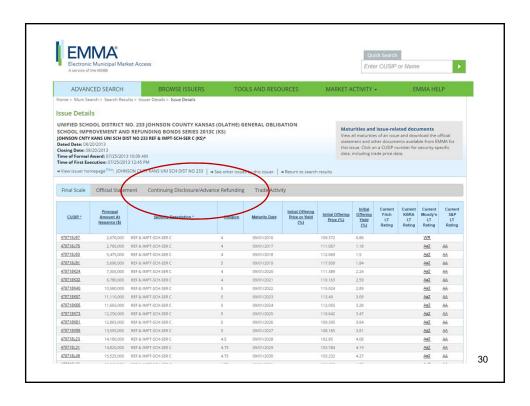
### **Continuing Disclosure**

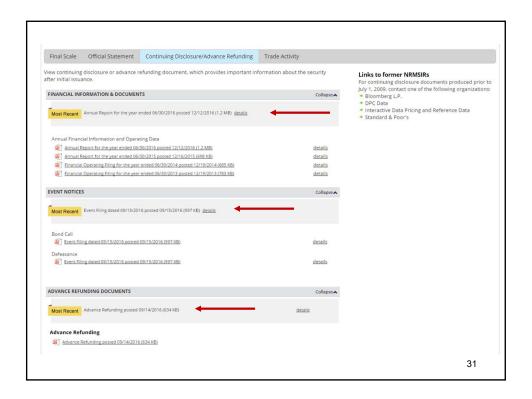
- Check your disclosure filing history
- Review existing Continuing Disclosure Undertakings/ Agreements to check existing requirements
  - Check last five years of filings
    - http://emma.msrb.org
  - File catch-up disclosure for any missing filings

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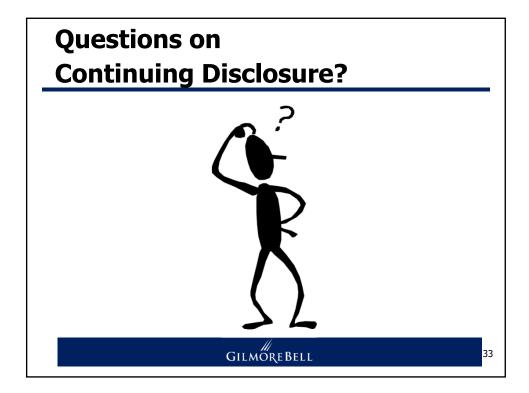




### **Disclosure Best Practices**

- Designate a "Disclosure Compliance Officer"
- Prepare and adopt (and follow) written policies & procedures
- Review Official Statements
  - New developments that might be material to investors
  - Keep omissions in mind
  - Prepare to spend extra time/effort on disclosure questions from everyone in the deal

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# **Take-Aways**

- Bond compliance doesn't end when all of the money is spent!
- Ask questions early and often
  - Some answers are very fact-specific
- Keep good documentation
- Don't forget disclosure
  - Annual reports and material events

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