
Application of Antifraud Provisions to Public Statements of Issuers and Obligated Persons of Municipal Securities in the Secondary Market: Staff Legal Bulletin No. 21 (OMS)

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Summary: This staff legal bulletin provides the views of the staff of the Office of Municipal Securities (the “Office” or the “staff”) regarding the application of the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934,^[1] and Rule 10b-5^[2] promulgated thereunder (together, the “antifraud provisions”) to public statements (a “statement” or “statements”) made by issuers of municipal securities and obligated persons (each, a “municipal issuer”^[3] and, together, “municipal issuers”) in the secondary market.^[4] As more fully discussed in this bulletin, the antifraud provisions apply to any statement of a municipal issuer that is reasonably expected to reach investors and the trading markets.

Supplementary Information: The statements in this legal bulletin represent the views of the Office. This legal bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the “Commission”). Further, the Commission has neither approved nor disapproved its content. This bulletin, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

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I. THE PURPOSE OF THIS BULLETIN

Market participants have raised questions about the application of the antifraud provisions to statements of municipal issuers, including annual and continuing disclosures accessible on the Electronic Municipal Market Access (“EMMA”) system of the Municipal Securities Rulemaking Board (“MSRB”), as well as other statements of municipal issuers.

The Office is issuing this bulletin to outline previous Commission statements relevant to understanding the application of the antifraud provisions to any statement of a municipal issuer that is reasonably expected to reach investors and the trading markets and, thereby, promote more informed disclosure practices by municipal issuers in the secondary market; facilitate investor access to accurate, timely, and comprehensive information; and improve investor protection. Specifically, this bulletin presents the Office’s views on:

- certain elements of Section 10(b) of the Exchange Act and Rule 10b-5;^[5]

- the scope of coverage under the antifraud provisions with respect to statements made by municipal issuers in the secondary market; and
- the role of policies and procedures in providing accurate, timely, and comprehensive information to investors and the trading markets.

II. BACKGROUND

One of the primary purposes of the federal securities laws is to ensure that the investing public is provided with comprehensive and accurate information about entities whose securities are publicly traded.^[6] A lack of consistent disclosure impairs investors' ability to acquire information necessary to make informed decisions, and thus, to protect themselves from fraud.^[7] The staff observes that the Commission has long been concerned with disclosure in both the primary and secondary markets for municipal securities^[8] and has regularly encouraged municipal issuers to provide timely and accurate information to investors and the trading markets.^[9]

In the absence of a statutory scheme for municipal securities registration and on-going reporting requirements for municipal issuers, the Commission's investor protection efforts in the municipal securities market have been accomplished primarily through regulation of broker-dealers and municipal securities dealers, including through Exchange Act Rule 15c2-12 ("Rule 15c2-12"); Commission interpretations; Commission oversight of the MSRB; and enforcement of the antifraud provisions of the federal securities laws.^[10] To facilitate the availability of important information about municipal issuers in the secondary market for municipal securities, Rule 15c2-12 requires an underwriter in a primary offering of municipal securities with an aggregate principal amount of \$1,000,000 or more (subject to certain exemptions set forth in Rule 15c2-12) to reasonably determine that a municipal issuer has undertaken in a written agreement or contract for the benefit of holders of the municipal securities, to provide certain enumerated annual and event-based disclosures to the MSRB's EMMA system.^[11]

In 1994, the Commission provided interpretive guidance regarding, *inter alia*, the application of the antifraud provisions to statements made by municipal issuers following an initial offering of municipal securities.^[12] In the 1994 Interpretive Release, the Commission provided principles-based guidance to assist municipal issuers, and others, in meeting their obligations under the federal securities laws, including under the antifraud provisions. Specifically, the Commission stated that when a municipal issuer releases information to the public that is reasonably expected to reach investors and the trading markets, those disclosures are subject to the antifraud provisions because such statements are a principal source of significant, current information about the municipal issuer.^[13] The Commission's principles-based approach to the application of the antifraud provisions applies to all statements of municipal issuers that are reasonably expected to reach investors and the trading markets notwithstanding changes in municipal issuer disclosure practices, technology, investor expectations, and regulatory framework.^[14]

III. ELEMENTS OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 LIABILITY ("ANTIFRAUD PROVISIONS")

The antifraud provisions apply to the purchase and sale of municipal securities in the secondary market, including to statements made by municipal issuers that are reasonably expected to reach investors and trading markets.^[15] Section 10(b) of the Exchange Act prohibits the use or employment, in connection with the purchase and sale of any security, of any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe.^[16] Rule 10b-5, in part, prohibits, in connection with the purchase or sale of any security, the making of any untrue statement of material fact or omitting 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.^[17]

A. Scier Standard

Scier is a required element of a violation of Section 10(b) of the Exchange Act and Rule 10b-5.^[18] The term “scier” refers to a mental state embracing intent to deceive, manipulate, or defraud.^[19] Courts and the Commission have stated that the scier requirement for violations of the antifraud provisions may be satisfied by a showing of recklessness.^[20] Recklessness has been defined as an “extreme departure from the standards of ordinary care, and which represents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.”^[21]

B. Materiality and the “Total Mix” of Information

For purposes of Section 10(b) of the Exchange Act and Rule 10b-5, a fact is material if there is a substantial likelihood that the information would have been viewed by the reasonable investor as having significantly altered the total mix of information available.^[22] As the Commission has stated, whether a statement of a municipal issuer significantly alters the total mix of information for purposes of Section 10(b) of the Exchange Act and Rule 10b-5 is determined based on the facts and circumstances in each instance.^[23] The staff observes that due to the facts and circumstances nature of the “total mix” analysis, the scope of information that may be viewed by a reasonable investor to significantly alter the total mix of information available could differ among municipal issuers. For example, the assessment of whether a particular piece of information about a municipal issuer significantly alters the total mix might differ if access to accurate, timely, and comprehensive information about that municipal issuer is “uneven and inefficient” rather than regularly available to investors either through the MSRB’s EMMA system or some other investor relations-focused public medium (e.g., investor website).^[24]

In the staff’s view, the 2013 Harrisburg Report illustrates the facts and circumstances nature of the “total mix” analysis. In the Harrisburg Report, the Commission noted that “[i]nvestors may be more likely to rely upon statements from public officials where written undertakings made pursuant to Rule 15c2-12 have not been fulfilled and required continuing disclosures are not available through [EMMA].”^[25] The Harrisburg Report involved circumstances in which officials who worked within the city’s administration released statements and financial information that omitted or misstated material information about Harrisburg’s financial condition.^[26] The misstatements and omissions were recurrent, spanned from one fiscal year into the next, and occurred during a period in which the City of Harrisburg failed to submit annual financial information, audited financial statements, notices of failure to provide required annual financial information, and material event notices.^[27]

Though the Harrisburg Report presents a scenario in which the municipal issuer failed to fulfill its contractual continuing disclosure obligations, the staff does not believe that such circumstances—*i.e.*, a municipal issuer’s failure to submit annual financial information, audited financial statements, notices of failure to provide required annual financial information and material event notices during a more than two-year period—are necessary for a municipal issuer to be subject to liability for violations of the antifraud provisions. Rather, the staff believes, consistent with the Commission’s prior statements that all statements of a municipal issuer that are reasonably expected to reach investors and the trading markets are subject to the antifraud provisions, regardless of the municipal issuer’s compliance with its continuing disclosure obligations. Nevertheless, because such statements are evaluated for antifraud purposes in light of the circumstances in which they are made, the extent to which the municipal issuer has made other statements may increase or decrease the risk that the statements may significantly alter the total mix of information.^[28]

C. Information Reasonably Expected to Reach Investors

As noted above, the Commission has stated that the antifraud provisions apply to all statements made by municipal issuers that provide information that is reasonably expected to reach investors and the trading markets.^[29] The Commission observed in the 1994 Interpretive Release

As a practical matter . . . municipal issuers do not have the option of remaining silent. Given the wide range of information routinely released to the public, formally and informally, by these issuers in their day-to-day operations, the stream of information on which the market relies does not cease with the close of a municipal offering.[30]

Municipal issuers disclose current information about themselves in a variety of ways, including public announcements, press releases, interviews with media representatives, and discussions with groups whose members have a particular interest in their affairs.[31] In addition, information about municipal issuers is collected by state and local governmental bodies and routinely made publicly available.[32] Because, as the Commission has noted, access to “current and reliable information is uneven and inefficient”[33] in the municipal securities market, these types of statements are “a principal source of significant, current information about the issuer of the security, and thus reasonably can be expected to reach investors and the trading markets.”[34] The fact that they are not published for purposes of informing the securities markets does not alter the mandate that they not violate the antifraud provisions.[35]

IV. EXAMPLES OF STATEMENTS COVERED BY THE ANTIFRAUD PROVISIONS

As noted above, like public companies,[36] municipal issuers disclose current information about themselves in a variety of ways, including continuing disclosure documents to the EMMA system,[37] public announcements, press releases, interviews with media representatives, and discussions with groups whose members have a particular interest in their affairs. The Commission has long encouraged public company disclosure through informal channels as a complement to the disclosure requirements of the Exchange Act.[38]

As also discussed above, the antifraud provisions apply to *all* municipal issuer statements that provide information that is reasonably expected to reach investors and the trading markets, whoever the intended primary audience and whatever the medium of delivery.[39] Notably, this standard applies to all statements by a municipal issuer, whether on the MSRB’s EMMA system or elsewhere, whether written or oral, and regardless of the extent to which the municipal issuer has fulfilled its contractual continuing disclosure obligations. The following sets forth a non-exhaustive list of examples of statements (other than disclosures on the MSRB’s EMMA system) in the municipal securities market that could be subject to the antifraud provisions.[40]

A. Information on Municipal Issuer Websites

1. General

The Commission has stated that municipal issuers are responsible for the accuracy of their statements that are reasonably expected to reach investors or the securities markets regardless of the medium through which the statements are made, including the Internet.[41] The Commission further stated that “it is important for issuers, including municipal securities issuers, to keep in mind that the federal securities laws apply in the same manner to the content of their websites as to any other statements made by or attributable to them,”[42] and these laws include the antifraud provisions.[43] Accordingly, the staff believes that municipal issuers should ensure that the information on their websites is accurate and not misleading.

2. Historical Information

Information posted to a website potentially has a long life.[44] In the context of public companies, the Commission has stated that it does not believe that the maintenance of previously posted materials or statements on public company websites constitutes a reissuance or republication of such materials or information for purposes of the antifraud provisions merely because the materials or statements remain accessible to the public.[45] However, the Commission noted, in circumstances where it is not apparent

to the reasonable person that the posted materials or statements speak as of a certain date or earlier period, previously posted materials or statements that have been put on a public company's website should be separately identified as historical or previously posted materials or statements, and located in a separate section of the website.^[46] The staff encourages municipal issuers to follow the Commission's guidance regarding the application of the antifraud provisions to historical information on the websites of public companies with respect to the display of historical information on the websites of municipal issuers.

3. Hyperlinks

The Commission has provided guidance regarding the liability of a public company and a municipal issuer under the antifraud provisions for information on third-party websites for which the public company or municipal issuer has provided a hyperlink on its own website.^[47] Addressing all issuers with respect to hyperlinked information, the Commission has noted that liability under the "entanglement" theory would depend upon an issuer's level of pre-publication involvement in the preparation of the information, whereas liability under the "adoption" theory would depend upon whether, after its publication, an issuer, explicitly or implicitly, endorses or approves the hyperlinked information.^[48] The Commission cited several factors that may be relevant in determining whether an issuer has adopted hyperlinked information, including the context of the hyperlink, the risk of confusing investors, and the presentation of the hyperlinked information.^[49] Subsequently, in 2008, the Commission provided further guidance for public companies, stating that the focus in evaluating liability for hyperlinked information should be on whether the public company has explicitly or implicitly approved or endorsed the statement of a third party.^[50] In making such evaluation, the Commission noted that public company statements about the hyperlink, including why the public company is including the hyperlink on its website, the nature of the hyperlink, and use of disclaimers, "exit notices," or "intermediate screens," could all be factors in the analysis.^[51] The staff encourages municipal issuers to follow the Commission's 2008 guidance regarding the application of the antifraud provisions to the use of hyperlinks on the websites of public companies with respect to the use of hyperlinks on the websites of municipal issuers.

4. Summary Information

Municipal issuers often provide on their websites summaries or overviews of information, particularly financial information. In the context of public companies, the Commission has stated that such summary information can be helpful to investors.^[52] However, the Commission noted that public companies must consider the context in which such summary information is provided to avoid confusing or misleading investors.^[53] The Commission encouraged public companies using summaries and overviews to highlight the nature of such information, including the use of appropriate titles and explanatory language, the use and placement of hyperlinks to the more detailed information being summarized, and the use of "layered" or "tiered" formats in presenting such information.^[54] The staff encourages municipal issuers to follow the Commission's guidance regarding the application of the antifraud provisions to the display of summary information on the websites of public companies with respect to the display of summary information on the websites of municipal issuers.

C. Public Reports Delivered to other Governmental or Institutional Bodies

In many cases, municipal issuers prepare and disseminate reports or other documents containing financial information and/or operating data to various governmental or institutional bodies, or to the public. The Commission previously has cited certain of these reports, including Comprehensive Annual Financial Reports, budgets, and mid-year financial reports, as information reasonably expected to reach investors and the trading markets, and therefore subject to the antifraud provisions, even if not filed with EMMA.^[55] Though the Commission has not specifically identified other types of reports which, once public, would be subject to the antifraud provisions, the staff believes that additional types of reports could be covered by the antifraud provisions depending on the facts and circumstances.^[56] In the staff's view, additional types of reports that could, depending on the facts and circumstances, be included in this

category may include (but may not be limited to) reports submitted by a municipality to a state agency, reports made by a state or local official to a legislative body (such as a state legislature or city council), and other reports made part of a public record and available to the public. In the staff's view, depending on the facts and circumstances, such reports could be a source of significant, current information about the municipal issuer and thus could reasonably be expected to reach investors and the trading markets.

D. Statements Made by Municipal Issuer Officials

The statements of municipal issuer officials^[57] are also subject to the antifraud provisions if their statements are reasonably expected to reach investors or the securities markets.^[58] Notably, statements by municipal issuer officials “who may be viewed as having knowledge regarding the financial condition and operation of a municipal issuer” could be a principal source of significant, current information about the issuer of the security and thus be reasonably expected to influence investors and the secondary market.^[59] Accordingly, depending on the facts and circumstances, the statements of municipal issuer officials that may be subject to the antifraud provisions could include verbal statements made by municipal issuer officials, such as speeches,^[60] public announcements, and interviews with media representatives,^[61] as well as statements disseminated through other avenues such as, in the staff's view, social media.^[62]

V. Role of Policies and Procedures

Given the potential for liability of municipal issuers and their officials with respect to information made publicly available about the municipal issuer that is reasonably expected to reach investors and the trading markets, the statements of a municipal issuer and its officials who may be viewed as having knowledge regarding the financial condition and operations of a municipal issuer should be carefully evaluated to assure that they are not materially false or misleading.^[63] The Commission has historically encouraged municipal issuers and their officials to take steps to reduce the risk of misleading investors.^[64] For example, in the 1994 Interpretive Release, in order to minimize the risk of misleading investors, the Commission recommended that municipal issuers “should establish practices and procedures to identify and timely disclose, in a manner designed to inform the trading market, material information reflecting on the creditworthiness of the issuer and obligor and the terms of the security.”^[65] In the Harrisburg Report, the Commission recommended that municipal issuers and their officials, at a minimum, “consider adopting policies and procedures that are reasonably designed to result in accurate, timely, and complete public disclosures; identifying those persons involved in the disclosure process; evaluating other public disclosures that the municipal issuer has made, including financial information and other statements, prior to public dissemination; and assuring that responsible individuals receive adequate training about their obligations under the federal securities laws.”^[66]

In the staff's view, such reasonably designed policies and procedures, when consistently implemented, can help a municipal issuer regularly provide more accurate, timely, and comprehensive information to investors; better manage communications with their investors; and comply with the antifraud provisions. For that reason, the staff encourages issuers to adopt policies and procedures which, among other things, designate an individual responsible for compliance with such policies and procedures; establish a periodic training schedule for issuer staff and officials responsible for developing, reviewing, and disseminating issuer disclosures; identify the documents, reports, etc. which customarily contain current information about, for example, the financial and operational condition of the issuer and establish a process by which the issuer makes such documents, reports, etc. regularly available to investors; and identify the place or places at which the issuer makes such documents, reports, etc. regularly available to the public, which may include a central repository, such as the EMMA system, or an investor-relations website.^[67]

[1] 15 U.S.C. § 78j (2019) (“Section 10(b) of the Exchange Act”).

[2] 17 C.F.R. § 240.10b-5 (2019) (“Rule 10b-5”).

[3] For purposes of this bulletin, the term “municipal issuer” includes an obligated person, as defined in 15 U.S.C. § 78o-4(e)(10) and 17 C.F.R. § 240.15c2-12(f)(10).

[4] For purposes of this bulletin, the terms “statement” or “statements” include any publicly available written or oral communication of a municipal issuer, regardless of the intended audience or medium of delivery.

[5] While this bulletin focuses solely on Section 10(b) of the Exchange Act and Rule 10b-5, the Office notes that other antifraud provisions, such as Section 17(a) of Securities Act of 1933, may apply to statements in the offer or sale of securities. 15 U.S.C. § 77q (2019).

[6] See Exchange Act Release No. 20560 (Jan. 13, 1984), 49 FR 2468, 2469 (Jan. 20, 1984) (the “1984 Release”).

[7] See, e.g., Exchange Act Release No. 34961 (Nov. 10, 1994), 59 FR 59590, 59591 (Nov. 17, 1994).

[8] *Id.* at 59591; Exchange Act Release No. 59062 (Dec. 5, 2008), 73 FR 76104 (Dec. 15, 2008) (“2008 Adopting Release”).

[9] See, e.g., Exchange Act Release No. 33741 (Mar. 9, 1994), 59 FR 12748, 12755-56 (Mar. 17, 1994) (the “1994 Interpretive Release”).

[10] See Securities and Exchange Commission, Report on the Municipal Securities Market (July 31, 2012) (“2012 Report”), available at <https://www.sec.gov/news/studies/2012/munireport073112.pdf>.

[11] In 2008, the Commission amended Rule 15c2-12 to designate the MSRB as the sole repository for the continuing disclosures of municipal issuers. See 2008 Adopting Release, *supra* note 8, 73 FR at 76110.

[12] See 1994 Interpretive Release, *supra* note 9, 59 FR at 12748.

[13] *Id.* at 12756 (citing to prior Commission guidance regarding public statements by corporate representatives in the 1984 Release).

[14] See Exchange Act Release No. 69516, “Report of Investigation in the Matter of the City of Harrisburg, Pennsylvania Concerning the Potential Liability of Public Officials with Regard to Disclosure Obligations in the Secondary Market” (May 6, 2013) (the “Harrisburg Report”), available at <https://www.sec.gov/litigation/investreport/34-69516.htm> and 1994 Interpretive Release, *supra* note 9, 59 FR at 12756.

[15] See, e.g., *In re City of Harrisburg, Pennsylvania*, Exchange Act Release No. 69515 (May 6, 2013).

[16] 15 U.S.C. § 78j(b) (2019).

[17] 17 C.F.R. § 240.10b-5(b) (2019).

[18] See *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 201 (1976) (“§10(b) was addressed to practices that involve some element of scienter, and cannot be read to impose liability for negligent conduct alone.”); *Aaron v. SEC*, 446 U.S. 680, 701-02 (1980).

[19] See *Hochfelder*, 425 U.S. at 194 n.12.

[20] See, e.g., *Miller v. Champion Enter., Inc.*, 346 F.3d 660, 672 (6th Cir. 2003); *In re Advanta Corp. Sec. Litig.*, 180 F.3d 525, 535 (3d Cir. 1999); *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970 (9th Cir. 1999); *In re City of Harrisburg, Pennsylvania*, Exchange Act Release No. 69515 (May 6, 2013); *In re West Clark Community Schools*, Exchange Act Release No. 70057 (July 29, 2013).

[21] See, e.g., *McLean v. Alexander*, 599 F.2d 1190, 1197 (3d Cir. 1979) (quoting *Sunstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1976)); *Hackbart v. Holmes*, 675 F.2d 856 (10th Cir. 1982).

[22] See *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

[23] See Harrisburg Report, *supra* note 14.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] Despite its focus on municipal issuer officials, the staff believes that the Harrisburg Report is instructive for municipal issuers as well.

[29] See 1994 Interpretive Release, *supra* note 9, 59 FR at 12756; 1984 Release, *supra* note 6, 49 FR at 2469; Exchange Act Release No. 42728 (Apr. 28, 2000), 65 FR 25843, 25848 (May 4, 2000) (the “2000 Electronic Media Release”); Harrisburg Report, *supra* note 14.

[30] 1994 Interpretive Release, *supra* note 9, 59 FR at 12755.

[31] *Id.* at 12755-56.

[32] *Id.*

[33] The staff acknowledges that the Commission’s statement regarding the uneven and inefficient access to current and reliable information about municipal issuers predates the creation and designation of EMMA as the central repository for municipal disclosures; nevertheless, the staff continues to believe that, though much improved, access to current and reliable information remains uneven and inefficient. See 2012 Report, *supra* note 10, Section III(B) at 69-83. For an example of an investor’s perspective regarding the inconsistency of access to disclosure, see Transcript of *The Road Ahead: Municipal Securities Disclosure in an Evolving Market* (Dec. 6, 2018) at 186, available at <https://www.sec.gov/spotlight/municipalsecurities/municipal-securities-conference-120618-transcript.pdf>; see also Letter to Chairman Jay Clayton, Securities and Exchange Commission from Scott Andreson, Chair, National Federation of Municipal Analysts (May 3, 2019), available at <https://www.nfma.org/assets/documents/position.stmt/nfmaLetterSECMSRBmay3.pdf> (highlighting issues with respect to the timeliness of financial disclosures in the municipal securities market).

[34] See 1994 Interpretive Release, *supra* note 9, 59 FR at 12756.

[35] *Id.*

[36] As used in this bulletin, the terms “public company” and “public companies” are meant to refer, as appropriate, to publicly held companies, operating companies, and companies as such terms are used by the Commission in the 1984 Release (*supra* note 6), the 2000 Electronic Media Release (*supra* note 29), and the 2008 Website Release (*infra* note 38).

[37] The staff acknowledges that, unlike public companies, a municipal issuer provides its formal secondary market disclosures under the terms of a contractual undertaking entered into for the benefit of the holders of the related municipal securities through which the municipal issuer contractually agrees to provide certain secondary market disclosures set forth in Rule 15c2-12.

[38] See Exchange Act Release No. 58288 (Aug. 1, 2008), 73 FR 45862, 45864 (Aug. 7, 2008) (the “2008 Website Release”) (encouraging public companies to make disclosure “more readily available to investors in a variety of locations and formats to facilitate investor access to that information” through websites because of the “enormous potential for the Internet to promote the goals of the federal securities laws” and because websites “can serve as effective information and analytical tools for investors.”).

[39] See 1994 Interpretive Release, *supra* note 9, 59 FR at 12756 (emphasis added).

[40] 2008 Website Release, *supra* note 38, 73 FR at 45863; *see also* Harrisburg Report, *supra* note 14.

[41] *See* 2000 Electronic Media Release, *supra* note 29, 65 FR at 25848.

[42] *Id.*

[43] *See* 2008 Website Release, *supra* note 38, 73 FR at 45869.

[44] *See* 2000 Electronic Media Release, *supra* note 29, 65 FR at 25855 (as observed by the Commission with respect to the websites of all issuers). For purposes of this bulletin, any reference to “all issuers” includes public companies, investment companies, and municipal issuers.

[45] *See* 2008 Website Release, *supra* note 38, 73 FR at 45870.

[46] *Id.*

[47] *See* 2000 Electronic Media Release, *supra* note 29, 65 FR at 25848-49 (addressing obligations of all issuers) and 2008 Website Release, *supra* note 38, 73 FR at 45870-71 (addressing only the obligations of public companies).

[48] *See* 2000 Electronic Media Release, *supra* note 29, 65 FR at 25848.

[49] *Id.*

[50] *See* 2008 Website Release, *supra* note 38, 73 FR at 45871.

[51] *Id.*

[52] *Id.* at 45872.

[53] *Id.*

[54] *Id.*

[55] *See* Harrisburg Report, *supra* note 14.

[56] *See* 1994 Interpretive Release, *supra* note 9, 59 FR at 12755-56 (discussing application of antifraud provisions to various public statements made by municipal issuers).

[57] For purposes of this bulletin, the term “municipal issuer official” includes elected officials, appointed officials, and employees or their functional equivalents, of any municipal issuer, and is intended to have the same meaning as the term “public official” as used in the Harrisburg Report. *See* Harrisburg Report, *supra* note 14.

[58] *See id.*

[59] *Id.*

[60] *See id.*; *see also* 1994 Interpretive Release, *supra* note 9, 59 FR at 12756 (“Municipal officials also make frequent public statements and issue press releases concerning the entity’s fiscal affairs.”).

[61] *See* 1984 Release, *supra* note 6, 49 FR at 2469.

[62] In the staff’s view, in light of the previous Commission statements that issuers are responsible for the accuracy of their statements that reasonably can be expected to reach investors or the securities markets regardless of the medium through which the statements are made, officials of municipal securities issuers should be mindful of the accuracy of statements distributed via all channels, including social media.

[63] *Id.*; *see also* 1994 Interpretive Release, *supra* note 9, 59 FR at 12756.

[64] *See id.*; *see also* 1984 Release, *supra* note 6, 49 FR at 2469 and Harrisburg Report, *supra* note 14.

[65] *See* 1994 Interpretive Release, *supra* note 9, 59 FR at 12756.

[66] See Harrisburg Report, *supra* note 14. The 2012 Report also addressed this issue, recommending that issuers and other municipal market participants follow and further develop initiatives to enhance disclosure policies and procedures for both primary offering and ongoing disclosures. Such initiatives may include the adoption of issuer disclosure committees and training programs. See 2012 Report, *supra* note 10, Section V(A)(3) at 141-42.

[67] This list is not intended to create any legal obligation for an issuer to develop such policies and procedures but rather sets forth the staff's view on the types of provisions which could enable an issuer to provide more accurate, timely, and comprehensive information to investors; better manage communications with their investors; and comply with the antifraud provisions.

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