

This is your Release #7 (September 2018)

The Securities Law of Public Finance

Third Edition

Robert A. Fippinger

This release expands and updates your book with the author's expert treatment of the following subjects, among many others:

Tax Cuts and Jobs Act: Certain provisions of the 2017 Tax Cuts and Jobs Act make state and local financing of infrastructure more difficult generally, and may affect the bond market. In addition, the Act repealed authority for states and political subdivisions to issue advance refunding bonds after December 31, 2017. See new § 1:2.2[B].

Public financing of sports stadiums: This release offers additional analysis of public financing of stadiums or arenas for the private use of privately owned professional sports franchises, a controversial practice that has been challenged as (1) a violation of state constitutional provisions prohibiting the giving or lending of state or local credit in aid of any private individual, company, or corporation, or (2) a violation of the public purpose doctrine. See § 1:2.3[A], at note 27.1.

Public financing of sectarian schools: In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, the U.S. Supreme Court in 2017 found that a state program that restricted aid to a religious institution in order to comply with the establishment clause of the Missouri State Constitution violated the federal Free Exercise Clause. See § 1:2.3[B], at note 49.

Disclosure—political influence: Reading between the lines of a number of enforcement actions, it appears that a frequent cause of material misstatements or misleading omissions in disclosure documents is the result of overt or implicit political pressure exerted on those drafting disclosure. It takes little imagination to infer that such pressure may have existed regarding the official statement description of some state pension plans that failed to disclose the extent of unfunded liabilities. And politics were implicit in the SEC's 2014 actions against the City of Allen Park, Michigan; its city administrator, who was responsible for overseeing preparation of the relevant official statements; and the city's mayor, who appointed and supervised the city administrator. See new § 8:2.1[A][2].

Disclosure—materiality issues: When drafting disclosure under the materiality standard, it is important to evaluate the context of a statement. A sentence may be literally true but may not be written in a manner that allows a reasonable

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investor to be accurately informed. Likewise, taken alone, a statement may be unclear or incomplete, but when read in the context of other information in the disclosure document, there is sufficient information for the reasonable investor to be accurately informed. When evaluating materiality, the focus should not be on a particular sentence in isolation, but on the entirety of the statements under consideration. Key points are illuminated by Justice Sotomayor’s opinion for a unanimous Court in *Matrixx Initiatives, Inc. v. Siracusano*, applying the total-mix approach of *Basic v. Levinson*. See new § 8:3.3[B].

Professional exams: Concerned about the complex testing requirements for individuals in various segments of the securities industry, FINRA proposed a restructuring of its examination program whereby all potential representative-level registrants would take a general-knowledge exam called the Securities Industry Essentials (SIE) exam and a specialized-knowledge exam tailored to their particular registered role. The SIE—designed to assess a candidate’s knowledge of basic securities industry information and concepts fundamental to working in the industry—was to be made available beginning October 1, 2018. See § 10A:2.5[D], at note 47.1.

Amendments to MSRB Rule G-34: In 2017, the MSRB amended Rule G-34, effective in June 2018, (1) to codify the MSRB’s longstanding interpretive view that the term “underwriters,” as used in Rule G-34, encompasses not only broker-dealers making a public distribution of an issuer’s securities, but also includes broker-dealers when acting as placement agents in private placements of municipal securities, including direct purchases by a single financial institution; (2) to extend to nondealer municipal advisors the requirement that a municipal advisor apply for CUSIP numbers when advising an issuer on a competitive transaction in municipal securities; and (3) to provide an exception from the CUSIP number requirements for broker-dealers (and for municipal advisors in competitive sales) when selling a new issue of municipal securities in certain direct purchase circumstances. See § 10A:3.4[A], at note 77.

Civil liability for statements of opinion in a disclosure document: This release analyzes the Supreme Court’s 2015 decision in *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, where Justice Kagan considered misrepresentations separately from material omissions: “In resolving the first, we discuss when an opinion itself constitutes a factual misstatement. In analyzing the second, we address when an opinion may be rendered misleading by the omission of discrete factual representations.” See new § 14:5.4.

Fraud in public finance: Chapter 14 is reorganized and updated to provide discussion, in new § 14:8, of Selected Topics in the Application of Antifraud Rules to Public Finance, as follows:

- § 14:8.1 The Source of a Duty to Provide New Issue Disclosure
- § 14:8.2 Transaction Fraud; Redemptions and Escrow Restructurings
- § 14:8.3 The Institutional Investors’ Obligations
- § 14:8.4 Insider Trading of Municipal Securities
- § 14:8.5 Fiduciary Fraud; Market Integrity

The **Table of Authorities** and the **Index** have also been updated.

FILING INSTRUCTIONS

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