

CONTINUING DISCLOSURE

6884

(New 5/1998)

The Securities and Exchange Commission requires issuers and other parties to an issuance who meet the definition of *obligated persons* to make disclosures about their bonds after the date of issuance (Rule 15c2-12). An *obligated person* is “any person who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations on the municipal securities to be sold.” Therefore, continuing disclosure is required on virtually all lease-revenue bonds, financing lease issues, and even on operating lease transactions, unless the transaction meets narrow exceptions to continuing disclosure set forth in SEC rules (e.g., certain private placements of securities with a limited number of sophisticated investors, certain short-term issues, and variable rate issues with tender options).

Disclosure is made through annual reports and notices of certain events. Material misstatements or omissions in the annual reports or events notices may be the basis for claims of securities fraud under federal or state securities laws, actionable by the Securities and Exchange Commission or private plaintiffs, with substantial potential liability for issuers or other obligated persons.

When STO act as the agent for sale, it will apprise client departments of their disclosure responsibilities. These will relate primarily to any actions which might modify the rights of security holders or release, substitution or sale of property securing repayment of the securities, and maintenance of required insurance. In transactions where STO is not the agent for sale, client departments are advised to obtain independent legal review of potential disclosure responsibilities.

In lease-revenue bond issues and other issues where rentals are payable from specific state special funds (e.g., the State Highway Account), the continuing disclosure agreement may require that particular information concerning the special fund be updated and provided in an annual report to investors. This information should be described in detail in the continuing disclosure agreement and carefully reviewed by the client department to be sure that it can be made available each year and that appropriate procedures have been established within the client department to assure compliance in future years.