



JONES HALL

# Overview of Federal Securities Laws

May 7, 2019

Chris Lynch  
Jones Hall

# Outline of Discussion

---

Key Federal Securities Laws

SEC Enforcement Actions

SEC Guidance

Potential Liability of City Officials

City Disclosure Policies and Procedures

# Key Federal Securities Laws

---

**Securities Act of 1933  
( ' 33 Act)**

**Securities Exchange Act of 1934  
( ' 34 Act)**

SEC Rule 10b-5  
SEC Rule 15c2-12

# Securities Act of 1933

---

## Registration

Exemption for munis

## Anti-Fraud – Section 17(a)

Only requires negligence: issuer or official knowingly misstated or omitted facts, or failed to discover facts that were available or could have been reasonably discovered

# Securities Exchange Act of 1934

---

## Anti-Fraud

Section 10(b) & Rule 10b-5

Requires “scienter” (intent to deceive, manipulate or defraud), including recklessness

Rule 15c2-12

# Rule 15c2-12

## Initial Disclosure

### NEW ISSUE - FULL BOOK-ENTRY

**RATING:**  
Standard & Poor's: "AA+"

*In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes, and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, provided, however, that, for the purpose of computing the alternative minimum tax imposed on corporations, such interest is taken into account in determining certain income and earnings. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See "LEGAL MATTERS - Tax Exemption."*



### **\$15,000,000** **CITY OF BERKELEY** **2016 General Obligation Bonds** **(Street and Integrated Watershed Improvements)**

**Dated: Date of Delivery**

**Due September 1, as shown on inside front cover**

**Issuance.** The general obligation bonds captioned above (the "Bonds") are being issued by the City of Berkeley (the "City") under provisions of the California Government Code and under a Resolution adopted by the City Council of the City (the "City Council") on May 31, 2016 (the "Bond Resolution"). The Bonds were authorized at an election of the registered voters of the City held on November 6, 2012, at which more than two-thirds of the persons voting on the proposition voted to authorize the issuance and sale of not to exceed \$30,000,000 principal amount of general obligation bonds. The City previously issued its City of Berkeley 2014 General Obligation Bonds (Street and Integrated Watershed Improvements) in the principal amount of \$15,000,000. The Bonds are the second and final series of bonds to be sold and issued under this authorization. See "THE BONDS - Authority for Issuance."

**Purpose.** The Bonds are being issued to finance improvements to streets, with integrated watershed improvements within the City. See "PLAN OF FINANCE - Purpose of Issue."

**Security.** The Bonds are general obligations of the City, payable solely from *ad valorem* property taxes levied by the City and collected by Alameda County (the "County"). The City Council is empowered and is obligated to annually levy *ad valorem* taxes for the payment of interest on, and principal of, the Bonds upon all property subject to taxation by the City, without limitation of rate or amount (except certain personal property which is taxable at limited rates). See "SECURITY FOR THE BONDS."

**Book-Entry Only.** The Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"). The Bonds are issuable as fully registered securities in denominations of \$5,000 or any integral multiple of \$5,000. Purchasers of the Bonds (the "Beneficial Owners") will not receive physical certificates representing their interest in the Bonds. See "THE BONDS" and "APPENDIX E - DTC AND THE BOOK-ENTRY ONLY SYSTEM."

**Payments.** Interest on the Bonds accrues from the date of delivery and is payable semiannually on March 1 and September 1 of each year, commencing March 1, 2017. Payments of principal and interest on the Bonds will be paid by The Bank of New York Mellon Trust Company, N.A., as Paying Agent, to DTC for subsequent disbursement to DTC Participants, which will remit such payments to the Beneficial Owners of the Bonds. See "THE BONDS - Description of the Bonds."

**Redemption.** The Bonds are subject to optional and mandatory sinking fund redemption prior to maturity. See "THE BONDS - Redemption."

The following firm, serving as municipal advisor to the City, has structured this issue.



**Maturity Schedule**  
**(See inside cover)**

**Cover Page.** This cover page contains certain information for general reference only. It is not a summary of all the provisions of the Bonds. Prospective investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

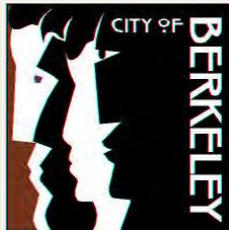
The Bonds will be offered when, as and if issued and accepted by the Underwriter, subject to the approval as to legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel to the City, and subject to certain other conditions. Jones Hall is also serving as Disclosure Counsel to the City. Certain legal matters are being passed upon for the City by the City Attorney. It is anticipated that the Bonds, in book entry form, will be available for delivery by DTC in New York, New York, on or about July 6, 2016.

The date of this Official Statement is June 21, 2016.

# Rule 15c2-12

## Continuing Disclosure Annual reporting Event reporting

CITY OF BERKELEY  
CALIFORNIA



Comprehensive Annual  
Financial Report for  
Year Ended June 30, 2018

### FORM OF CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (this "Disclosure Certificate") is executed and delivered by the City of Berkeley (the "City") in connection with the issuance of the bonds captioned above (the "Bonds"). The Bonds are being issued under the Constitution and laws of the State of California, including but not limited to, Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, under a resolution adopted by the City Council of the City on May 31, 2016 (the "Bond Resolution") and pursuant to and consistent with the Charter of the City.

The City hereby covenants and agrees as follows:

**Section 1. Purpose of the Disclosure Certificate.** This Disclosure Certificate is being executed and delivered by the City for the benefit of the holders and beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

**Section 2. Definitions.** In addition to the definitions set forth above and in the Bond Resolution, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section 2, the following capitalized terms have the following meanings:

*"Annual Report"* means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4.

*"Annual Report Date"* means the date not later than April 1 after the end of each fiscal year of the City (currently June 30<sup>th</sup>).

*"Dissemination Agent"* means the City or any other Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation. As of the date of this Disclosure Certificate, the City is acting as Dissemination Agent.

*"Listed Events"* means any of the events listed in Section 5(a).

*"MSRB"* means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information for purposes of the Rule.

*"Official Statement"* means the final official statement executed by the City in connection with the issuance of the Bonds.

*"Participating Underwriter"* means any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

*"Rule"* means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

# SEC Enforcement Actions – Orange County

---

- County was relying on risky investment strategies to balance its budget, and failed to disclose the risky nature of its investments
- County filed for bankruptcy protection in 1994; SEC brought enforcement action in 1996 (there were no bond defaults)
- Board of Supervisors failed to take “*steps appropriate under the circumstances*” to assure that the County's financial situation was being adequately disclosed to potential investors

*“Public official may not authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading”*

- Takeaway: Public officials have disclosure obligations



# SEC Enforcement Actions

---

- San Diego issued \$260 million through 5 issues in 2002 and 2003
- SEC alleged City officials had engaged in securities fraud for failing to disclose material information

City had large unfunded liabilities for pensions and retiree health care, but did not adequately disclose in OS, rating agency documents, audits

Officials falsely certified there were no material misstatements

Did not hire auditors with the skills and resources necessary to adequately audit City's financials in connection with its securities offerings

# SEC Guidance

---

“Lessons Learned from San Diego,” Linda Chatman Thomsen, Director, SEC Division of Enforcement (2007)

“What should the municipal securities markets take away from these actions? I can tell you that the Enforcement Division believes there are five critical lessons that municipalities should learn from our recent actions”

- adopt written disclosure policies and procedures
- provide appropriate training to city officials and employees
- focus on the big picture issues facing the city
- disclose the bad with the good
- hire competent professionals

# Potential Liability of City Officials

## Orange County

- **Treasurer**  
SEC cease and desist order  
Sentenced to 6 years in jail  
\$100,000 fine
- **Assistant Treasurer**  
SEC cease and desist order  
Sentenced to 3 years in jail  
\$10,000 fine

## San Diego

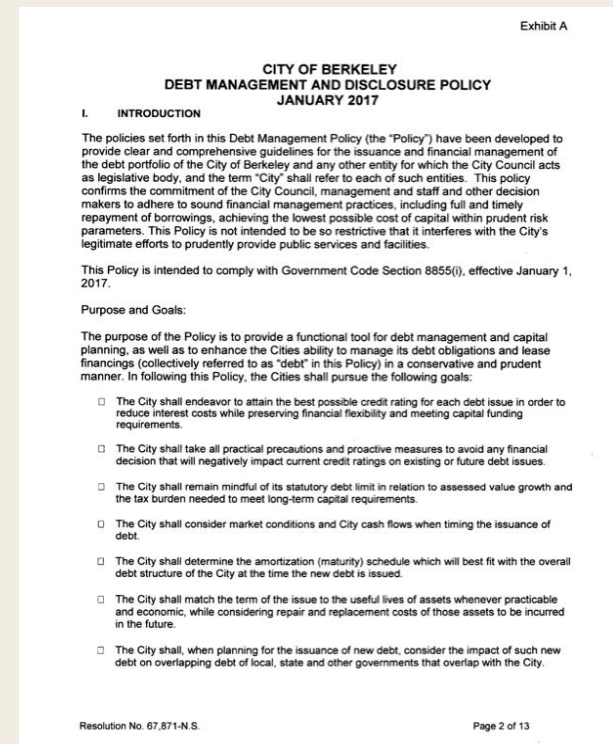
- **City Manager, Deputy City Manager, Auditor, Comptroller, City Treasurer**  
Injunction against future violations  
Civil penalties (\$5,000-25,000)

# City Disclosure Policies (2017)

- Establishes Disclosure Working Group

Reviews POS/OS and continuing disclosure filings

- Requires training
- Requires bond staff reports to remind City Council of disclosure responsibilities



# Questions

---

**Chris Lynch**

clynch@joneshall.com

415.391.5780

www.joneshall.com