



California Corporate & Securities Law

California Is The Largest Issuer In The United States

Posted In [California Securities Laws, Enforcement & Investigations, Securities Litigation](#)

9/24/2010

On September 21, 2010, the Securities and Exchange Commission held its first in a series of [hearings](#) concerning the municipal securities markets. California Treasurer [Bill Lockyer](#) submitted these written [remarks](#). In these remarks, the Treasurer mentions that last year California was “the largest issuer in the nation including corporate issuers” (with certain footnoted exceptions).

In August, the SEC charged the State of New Jersey with securities fraud for “misrepresenting and failing to disclose to investors in billions of dollars worth of municipal bond offerings that it was underfunding the state’s two largest pension plans”. This is the first time that the SEC has charged a state with violations of the federal securities laws. New Jersey settled the matter without admitting or denying the allegations. In the SEC’s [order](#) instituting cease and desist proceedings, the SEC pointed out:

[New Jersey’s Department of the] Treasury had no written policies or procedures relating to the review or update of the bond offering documents. In addition, Treasury did not provide training to its employees concerning the State’s disclosure obligations under the accounting standards or the federal securities laws.

These statements made me curious about the situation here in California. So, I followed up with the California Treasurer’s office regarding its disclosure policies and procedures. The Treasurer’s office provided me with a timely and comprehensive explanation of the procedures that the state follows in preparing its disclosure documents.

In general, the state’s disclosure documents consist of two parts. The “front portion” describes the specific indebtedness being offered, including information about the interest rate, redemption provisions and security. “Appendix A” describes California’s finances, budget, economy, debt structure and other related information. According to the Treasurer’s office, preparation of Appendix A involves a working group comprised of staff from the offices of the Treasurer, Controller, Director of Finance and Attorney General. Outside legal counsel and the state’s financial adviser also contribute to the effort. The Treasurer does have its own internal procedures for producing Appendix A but has not established a formal disclosure committee.

The Treasurer’s office states that the Treasurer is “generally aware” of the contents of the official statements but has delegated certification responsibilities. This is interesting for several reasons. First, Chief Financial Officers of private issuers cannot delegate their certification responsibilities. Although the case can be made

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that the Treasurer's responsibilities make it impracticable, if not unfair, to require his personal certification, the same case can be made in respect of CEOs. Second, the SEC specifically noted in its order that New Jersey's "Treasurers did not read official statements, and relied on their staff to ensure the accuracy of information contained in the documents." Finally, the value of such a certification is debatable. For example, this academic [study](#) by Utpal Bhattacharya, Peter Groznik, and Bruce Haslem concluded "that CEO certification of earnings numbers was, at best, a marginally valuable addition to the arsenal of good corporate governance practices."

I also asked about contacts between the SEC and the Treasurer's office. Here's the Treasurer's response: "The State has never been contacted or investigated by the Securities and Exchange Commission regarding any of our bond or note issues."

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