

## Mark W. Dick – SEC v. GAAP

Who controls the pension disclosures that you include in your bond offering statements? As you are well aware, the Governmental Accounting Standards Board establishes the standards. However, the SEC is asking for different standards. In my opinion, the SEC seems eager to override Generally Accepted Accounting Principles (GAAP) for state and local governments.

In our first video we discussed how pension disclosures were at the heart of the lawsuit brought by the SEC against the state of New Jersey, which was the first time the SEC sued a state under the anti-fraud provisions of the 1933 Act. In August of 2010, the SEC issued their cease and desist order to the state of New Jersey. That order contained a lot of technical issues, but one of the primary issues related to the concept of marking pension assets to market value.

The current GASB literature does not require pension plans to mark to market their assets in computing actuarial evaluation. Instead, they allow a smoothing effect that takes care of these rapid or deep fluctuations over a 30-year period. Now, in the cease and desist order, the SEC took exception to the smoothing concept itself, and it made some very telling statements. Let me quote: “The bond offering statement did not disclose the effect of the state using the five-year smoothing method.” It went on to say that because of the significant difference between the actuarial value using the smoothing method and the market value, the statements did not reflect the current position of the pension plan. It finally concluded with a very strong statement that says, “Investors lack sufficient information to assess the current financial health as a result of the absence of those market values.”

In June 2011, the Governmental Accounting Standards Board issued two new exposure drafts related to pension accounting and financial reporting. Those drafts include a lot of needed changes. However, they continue with the concept of using the smoothing method. They simply shorten that period from 30 years down to five years. So based on that, it is pretty obvious that GASB and the SEC do not see eye-to-eye on marking to market pension plan assets.

In the meantime, what are you to do? The National Association of Bond Lawyers did issue a discussion memorandum that includes examples of disclosures that you should consider including in your bond offering statement. So, if you are in the process of preparing an offering statement, or soon will be, we encourage you to contact your bond counsel and discuss this issue. Thanks for taking a moment to talk about this vital topic. In case you missed our first video, go to [www.aghlc.com](http://www.aghlc.com) and click on “Video Archives.” Thanks.