

To:

From:

Date:

**Subject: Securities Exchange Commission Municipal Continuing
Disclosure Cooperative Initiative**

RECOMMENDATION:

Authorize [**Finance Director**][**Mayor**] to take all actions to timely self-report under the Municipal Continuing Disclosure Cooperative Initiative (Initiative) in consultation with bond counsel and [**City**][**County**] Attorney pursuant to the resolution (the “Resolution”) attached hereto as Exhibit A.

BACKGROUND:

Securities and Exchange Commission (SEC) Rule 15c2-12 (the Rule) requires that before a local government can issue municipal bonds to investors in a public sale, the bond underwriters must reasonably determine that the issuer has undertaken to provide certain updated disclosure information to the Municipal Securities Rulemaking Board after the issuance of the bonds. This information is contained in the Continuing Disclosure Certificate and includes annual financial and operating data, audited financial statements and notices of certain listed events. In addition, the Rule requires that final official statements must disclose any material failure to comply with a continuing disclosure undertaking during the previous five years.

The SEC has the ability to file enforcement actions against issuers who inaccurately state in final official statements that they have complied with their continuing disclosure undertakings. In July 2013, for example, the SEC brought an enforcement action against West Clark Community Schools, an Indiana school district, for affirmatively stating in offering documents that it had not failed to comply with its continuing disclosure obligations when it had in fact failed to make any continuing disclosure filings in the preceding five years. Without admitting or denying the SEC's findings, the school district and underwriter each consented to, among other things, a cease and desist order for making false statements and/or omitting relevant information. In addition, the underwriter agreed to pay almost \$600,000 in fines. The underwriter penalty cap incentivizes underwriters to thoroughly disclose all possible inaccurate statements in connection with any issuances they have underwritten in the preceding five years.

On March 10, 2014, the SEC Division of Enforcement (Division) announced the Initiative (Exhibit I to the Resolution) with the intention of addressing violations of the Rule. Under the Initiative, the Division will recommend the following standardized settlement terms for issuers who self-report possible violations of the Rule and comply with all other requirements of the Initiative. The Initiative requires:

SEC Municipal Continuing Disclosure Cooperative Initiative

_____, 2014

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1. The issuer consent to the institution of a cease-and-desist proceeding by the SEC in which the issuer neither admits nor denies the findings;
2. The issuer establish appropriate policies and procedures regarding continuing disclosure and implement training;
3. The issuer comply with its existing continuing disclosure undertakings, including updating past delinquent filings;
4. The issuer cooperate with any subsequent SEC investigation regarding the violations disclosed in the self-report;
5. The issuer disclose its settlement terms in any final official statement for a bond offering made in the five years following initiation of the proceedings;
6. The issuer provide the SEC with a compliance certificate regarding the issuer's undertakings within one year.

So long as the SEC accepts the settlement terms recommended by the Division, the SEC will not assess financial penalties against the issuer who complies with the Initiative. The Initiative does not provide any assurances to individuals such as elected officials and non-elected staff. The Division may recommend enforcement actions against any such individuals, and the SEC will decide whether to seek remedies against individuals on a case-by-case basis based on level of intent, culpability and other factors, such as cooperation by the individual.

Underwriters of municipal bonds must similarly self-report in order to be recommended for a settlement under the Initiative. For underwriters, however, the Division will recommend a settlement of \$20,000 per non-compliant offering of \$30 million or less and \$60,000 per non-compliant offering of more than \$30 million. The penalty, however, is capped at \$500,000.

The SEC has stated that the Division will likely recommend financial sanctions against issuers who have materially violated their continuing disclosure undertakings and failed to disclose those violations, but do not self-report under the Initiative.

DISCUSSION/ANALYSIS:

Any issuer that entered into a continuing disclosure undertaking and subsequently issued bonds involving a final official statement within the past five years is a candidate for the Initiative. The [City][County] has entered into numerous continuing disclosure certificates over the years. Therefore, it is fiscally responsible for the [City][County] to review its disclosure and take advantage of the Initiative after consultation with appropriate counsel.

The Government Finance Officers' Association has recommended that issuers take the following steps to determine how to respond to the Initiative:

1. **Review Continuing Disclosure:** Staff will **[audit] [engage a third party to audit]** all disclosure filings made from FY 2004 through FY 2013. Once the audit is completed, staff will discuss any findings with counsel to review materiality and determine whether it is recommended that the **[City][County]** self-report.
2. **Contact Bond Underwriters:** Staff will begin contacting all underwriters that have purchased its bonds from FY 2004 through FY 2013 to determine if any underwriter intends to self-report. Due to the number of bond issues undertaken by the underwriters and the relatively short timeframe for self-reporting, the review process is onerous. Again, the underwriter penalty cap incentivizes underwriters to thoroughly disclose all possible inaccurate statements in connection with any issuances they have underwritten in the preceding five years.
3. **[Adopt] [Affirm]Policies and Procedures:** Staff understands the importance of its disclosure responsibilities. [Our [existing] [proposed]policy includes procedures for ongoing disclosure including the formation of a group of key staff members to review disclosure and disclosure training for both staff and governing body members.]
4. **Confer with Appropriate Attorney and Governing Body:** Self-reporting under the Initiative is an important decision that carries legal consequences. After the comprehensive audit of the disclosure has been completed and discussed with **[bond counsel and the]City Attorney**, the decision to complete the Initiative's Questionnaire for Self-Reporting Entities (Exhibit II to the Resolution) can be made. The current deadline for self-reporting under the Initiative is midnight, September 9, 2014.

Staff will review the audit results, and, if determined necessary, will self-report by September 9, 2014. Staff will provide an update after the filing date.

Attachments:

Exhibit A: Form of Resolution with Exhibit I (SEC MCDC Release) and Exhibit II (MCDC Questionnaire for Self-Reporting) SEC Division Initiative

EXHIBIT A

RESOLUTION TO AUTHORIZE ALL NECESSARY ACTIONS IN CONNECTION WITH
THE SECURITIES AND EXCHANGE COMMISSION'S "MUNICIPALITIES CONTINUING
DISCLOSURE INITIATIVE"

WHEREAS, on March 10, 2014, the Securities and Exchange Commission issued a release attached hereto as Exhibit I entitled the "Municipalities Continuing Disclosure Cooperation ("MCDC"); and

WHEREAS, the period for self-reporting expires at midnight on September 9, 2014.

NOW THEREFORE BE IT RESOLVED that the recommendation described in the Memorandum attached hereto as Exhibit II with respect to the MCDC is accepted, that the consequences of self-reporting, if necessary are acknowledged and understood, and that the Mayor and the Finance Director, upon consultation with the [City][County] Attorney and such other professionals as they shall determine to be appropriate, are hereby authorized to take all actions necessary to timely self-report under the MCDC, if they determine such reporting to be necessary.

ENTERED this ___ day of _____, 2014

EXHIBIT I

PRESS RELEASE

SEC Launches Enforcement Cooperation Initiative for Municipal Issuers and Underwriters

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FOR IMMEDIATE RELEASE

2014-46

Washington D.C., March 10, 2014 —

The Securities and Exchange Commission today announced a new cooperation initiative out of its Enforcement Division to encourage issuers and underwriters of municipal securities to self-report certain violations of the federal securities laws rather than wait for their violations to be detected.

"The Enforcement Division is committed to using innovative methods to uncover securities law violations and improve transparency in the municipal markets," said Andrew J. Coresney, director of the SEC Enforcement Division. "We encourage eligible parties to take advantage of the favorable terms we are offering under this initiative. Those who do not self-report and instead decide to take their chances can expect to face increased sanctions for violations."

Under the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative, the Enforcement Division will recommend standardized, favorable settlement terms to municipal issuers and underwriters who self-report that they have made inaccurate statements in bond offerings about their prior compliance with continuing disclosure obligations specified in Rule 15c2-12 under the Securities Exchange Act of 1934.

Rule 15c2-12 generally prohibits underwriters from purchasing or selling municipal securities unless the issuer has committed to providing continuing disclosure regarding the security and issuer, including information about its financial condition and operating data. The rule also generally requires that municipal bond offering documents contain a description of any instances in the previous five years in which the issuer failed to comply, in all material respects, with any previous commitment to provide such continuing disclosure.

"Continuing disclosures are a critical source of information for investors in municipal securities, and offering documents should accurately disclose issuers' prior compliance with their disclosure obligations," said LeeAnn Ghazil Gaunt, chief of the SEC Enforcement Division's Municipal Securities and Public Penalties Unit. "This initiative is designed to promote improved compliance by encouraging responsible behavior by market participants who have failed to meet their obligations in the past."

The SEC can file enforcement actions against municipal issuers for making misrepresentations in bond offerings about their prior compliance with continuing disclosure obligations. Underwriters for such bond offerings also can be liable for failing to exercise adequate due diligence regarding the truthfulness of representations in the issuer's official statement. For instance, the SEC recently charged a school district in Indiana and its underwriter with falsely stating to investors that it had been properly providing annual financial information and notices required as part of its prior bond offerings.

Eligibility for the MCDC Initiative is explained in a detailed announcement by the Enforcement Division. Issuers and underwriters must self-report by completing a questionnaire and submitting it via e-mail or by fax or mail no later than Sept. 10, 2014.

The MCDC Initiative is being led by Peter K.M. Chan, an assistant director in the Municipal Securities and Public Pensions Unit and the Chicago Regional Office.

EXHIBIT II



**U.S. SECURITIES AND EXCHANGE COMMISSION
DIVISION OF ENFORCEMENT**

**MUNICIPALITIES CONTINUING DISCLOSURE COOPERATION INITIATIVE
QUESTIONNAIRE FOR SELF-REPORTING ENTITIES**

NOTE: The information being requested in this Questionnaire is subject to the Commission's routine uses. A list of those uses is contained in SEC Form 1662, which also contains other important information.

1. Please provide the official name of the entity that is self-reporting ("Self-Reporting Entity") pursuant to the MCDC Initiative along with contact information for the Self-Reporting Entity:

Individual Contact Name:
Individual Contact Title:
Individual Contact telephone:
Individual Contact Fax number:
Individual Contact email address:

Full Legal Name of Self-Reporting Entity:
Mailing Address (number and street):
Mailing Address (city):
Mailing Address (state): Select a state...
Mailing Address (zip):

2. Please identify the municipal bond offering(s) (including name of Issuer and/or Obligor, date of offering and CUSIP number) with Official Statements that may contain a materially inaccurate certification on compliance regarding prior continuing disclosure obligations (for each additional offering, attach an additional sheet or separate schedule):

State: Select a state...
Full Name of Issuing Entity:
Full Legal Name of Obligor (if any):
Full Name of Security Issue:
Initial Principal Amount of Bond Issuance:
Date of Offering:
Date of final Official Statement (format: MMDDYYYY):
Nine Character CUSIP number of last maturity:

3. Please describe the role of the Self-Reporting Entity in connection with the municipal bond offerings identified in Item 2 above (select Issuer, Obligor or Underwriter):

- Issuer
- Obligor
- Underwriter

4. Please identify the lead underwriter, municipal advisor, bond counsel, underwriter's counsel and disclosure counsel, if any, and the primary contact person at each entity, for each offering identified in Item 2 above (attach additional sheets if necessary):

Senior Managing Underwriting Firm:

Primary Individual Contact at Underwriter:

Financial Advisor:

Primary Individual Contact at Financial Advisor:

Bond Counsel Firm:

Primary Individual Contact at Bond Counsel:

Law Firm Serving as Underwriter's Counsel:

Primary Individual Contact at Underwriter's Counsel:

Law Firm Serving as Disclosure Counsel:

Primary Individual Contact at Disclosure Counsel:

5. Please include any facts that the Self-Reporting Entity would like to provide to assist the staff of the Division of Enforcement in understanding the circumstances that may have led to the potentially inaccurate statements (attach additional sheets if necessary):

On behalf of [Name of Self-Reporting Entity]

I hereby certify that the Self-Reporting Entity intends to consent to the applicable settlement terms under the MCDC Initiative.

By: _____

Name of Duly Authorized Signer:

Title: