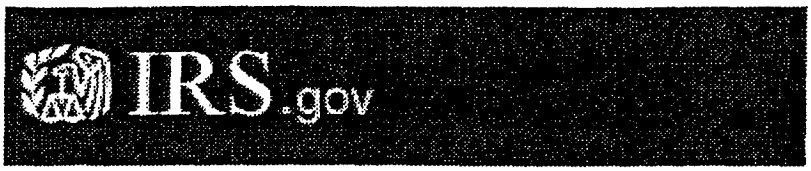
Overview of Tax-Exempt Governmental Bond Post-Issuance Continuing Compliance and Disclosure Requirements:

1. From Internal Revenue Service ("IRS") Website: January 26, 2009, IRS Launches Compliance Check on Governmental Bond Financings with the following IRS attachments:
    a. Form 14002 - Governmental Bond Financings Compliance Check Questionnaire
    b. Letter 4408 - Compliance Check Letter to Governmental Issuers
    c. Compliance Checks Overview
2. Information and Examples from Issuer's Counsels' Perspectives:
    a. City of Miami Code, Chapter 2 Administration, Article XI Boards, Committees, Commissions, Division 14 – Homeland Defense/Neighborhood Improvement Bond Program Oversight Board ("Bond Oversight Board") Provisions
    b. Examples: Project Update, Overviews, and Project Analysis Form Used at Monthly Meetings of the Bond Oversight Board
    c. Examples: Continuing Compliance Covenants from City of Miami Agreements/Leases with Not-For-Profit Users of Bond Financed Facilities
3. Information and Examples from Bond Counsels' Perspectives:
    a. Federal Tax Update: Top Ten Things You Should Do After a Deal Closes
    b. Record Retention Requirements for Tax-Exempt Bonds and Tax Credit Bonds: A Specific Proposal for Published Guidance (IRS Advisory Committee on Tax Exempt and Government Entities, June 10, 2009)
    c. IRS Revenue Procedures 97-13 and 2001-39
4. Information and Examples from Disclosure Counsels' Perspectives:
    a. Securities and Exchange Commission ("SEC") Rule 15c2-12 Municipal Securities Disclosure, Electronic Municipal Market Access System ("EMMA"), and Historical Overviews of Continuing Disclosure Requirements
    b. National Association of Bond Lawyers ("NABL") Post-Issuance Compliance Checklist
    c. Example: Disclosure Dissemination Agent Agreement
    d. Example: Continuing Disclosure Certificate
5. Information and Examples from Underwriters' Counsel's Perspective
    a. Municipal Securities Rulemaking Board ("MSRB") Proposed Rule re Municipal Securities Sales Practices
    b. MSRB Proposed Rule re Additional Required EMMA Filings
    c. Example: Purchase Contract -- Underwriting Period Disclosure Clause
    d. Example: Remarketing Agreement – Updated Disclosure Clause
6. Information and Examples from Perspective of Counsel for Conduit Borrowers and Not-for-Profit Users of Bond Financed Facilities:
    a. Post-Issuance Tax Compliance: Issues for Conduit Borrowers and Not-for-Profit Users
    b. Post-Issuance Continuing Disclosure Compliance: Issues for Conduit Borrowers and Not-for-Profit Users
    c. Example: Arbitrage Certificate
    d. Example: Use of Proceeds Certificate
    e. Example: Continuing Disclosure Agreement
7. Information and Examples from Financial Advisor's Perspective
    a. Beyond the law, why is disclosure necessary?
    b. What do investors expect?
    c. How does disclosure benefit the municipality and its management?

IRS Launches Compliance Check on Governmental Bond Financings



IRS Launches Compliance Check on Governmental Bond Financings

The Tax Exempt Bonds function (TEB) of the IRS Tax Exempt and Government Entities division has initiated a compliance project to evaluate the post-issuance and record retention policies, procedures and practices of governmental issuers of tax-exempt bonds. TEB is sending compliance check questionnaires to 200 governmental entities that issued tax-exempt bonds in calendar year 2005, as indicated on their Form 8038-G, Information Return for Tax-Exempt Governmental Obligations. The questionnaires will be sent out on Monday, January 26, 2009. Governmental entities selected for the project will have 90 days to respond. TEB will grant up to 30 additional days to respond in individual cases based upon facts and circumstances.

The governmental bond financings project is designed to measure several aspects of the post-issuance compliance knowledge and practices of governmental issuers of tax-exempt bonds. The questionnaire covers:

- record retention requirements;
- qualified use of bond-financed property requirements;
- arbitrage yield restriction and rebate requirements;
- debt management policies and procedures; and
- awareness of voluntary compliance and educational resources.

Copies of the questionnaire and cover letter are available at the links below:

Form 14002, *Governmental Bond Financings Compliance Check Questionnaire*
Letter 4408, *Governmental Bond Post-Issuance and Record Retention Practices*
Publication 4386, *Compliance Checks: Examination, Audit or Compliance Check?*

"The governmental bond financings project is another example of the IRS's commitment to promoting compliance throughout the tax-exempt and government entities community," said Moises C. Medina, Director, Government Entities. "The information we receive will help us better understand compliance issues and practices in the governmental bonds community and improve our educational resources and services to this market segment."

This project is TEB's second major use of the compliance check questionnaires to measure and promote tax compliance in the tax-exempt bond market. In September, 2008, a TEB interim report presented the analysis and preliminary conclusions on data collected from 207 section 501(c)(3) organizations that identified themselves as beneficiaries of tax-exempt bonds. The report concluded that, while a high percentage of the charitable financings market segment recognized the importance of post-issuance compliance and record retention procedures, there appeared to be significant gaps in the effective implementation of such procedures.

"The soft-contact approach proved successful in promoting post-issuance compliance within the charitable financings market segment. I am excited about the continued use of this approach with respect to governmental bonds, which allows us to obtain important information efficiently and at a reduced burden to the community when compared to examinations of the bond issues," said Clifford J. Gannett, Director, Tax Exempt Bonds.

The IRS expects to issue a report on the governmental bond financings project after TEB has received and compiled the responses to the questionnaires.

Governmental bonds are tax-exempt obligations issued by a state or local government, the proceeds of which are generally used to finance activities or facilities owned, operated, or used by that or another government for its own purposes, and which satisfy applicable federal tax law requirements.

Form **14002**
(September 2008)

Department of the Treasury — Internal Revenue Service

Governmental Bond Financings Compliance Check Questionnaire

OMB No. 1545-2071

This questionnaire asks for information regarding your post-issuance bond compliance and record retention practices. Please complete the questionnaire and follow the instructions in the accompanying letter for returning it to us.

Name of Governmental Entity: _____

Employer Identification Number: _____

PART I - POST-ISSUANCE COMPLIANCE - GENERAL

1. Do you have written procedures to ensure that governmental bond financings remain in compliance with the following federal tax requirements after the bonds are issued:

   a. Proper use of bond proceeds? ☐ Yes ☐ No
   If Yes, date they were implemented? _____ (dd/mm/yyyy)

   b. Timely expenditure of bond proceeds? ☐ Yes ☐ No
   If Yes, date they were implemented? _____ (dd/mm/yyyy)

   c. Proper use bond-financed property? ☐ Yes ☐ No
   If Yes, date they were implemented? _____ (dd/mm/yyyy)

   d. Arbitrage yield restriction and rebate? ☐ Yes ☐ No
   If Yes, date they were implemented? _____ (dd/mm/yyyy)

   e. Timely return filings and other general requirements? ☐ Yes ☐ No
   If Yes, date they were implemented? _____ (dd/mm/yyyy)

   f. Documenting compliance with other general requirements? ☐ Yes ☐ No
   If Yes, date they were implemented? _____ (dd/mm/yyyy)

   Describe in detail your procedures for each of the above items (a-f) and how you implement them, including dates of revisions, if any. In lieu of the above descriptions, you may attach a copy of your written procedures. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure bond financings are in compliance with federal tax requirements. *(Attach sheet with description)*

2. Who is primarily responsible for monitoring post-issuance compliance of bond financings?

   ☐ Elected or appointed officials — What is the person's title? _____
   ☐ Non-elected or non-appointed officials — What is the person's title? _____
   ☐ Staff Person — What is the person's title? _____
   ☐ Other Person — What is the person's title? _____
   ☐ None

3. If more than one individual is responsible for maintaining the records related to bond financings, do you have written procedures for assigning responsibilities that would ensure compliance with these financings? ☐ Yes ☐ No ☐ N/A

   If Yes, date they were implemented? _____ (dd/mm/yyyy)

   Describe in detail your procedures for assigning responsibility to each party involved and how you implement them, including dates of revisions, if any. In lieu of the above description, you may attach a copy of the written procedures used to assign responsibility to those individuals handling the bond financings. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure bond financings are in compliance with federal tax requirements. *(Attach sheet with description)*

4. Do you provide training or educational resources to personnel that are responsible for ensuring compliance with the post-issuance private use limitations for bond-financed property? ☐ Yes ☐ No

5. Are you aware of the following options available for voluntarily correcting failures to comply with post-issuance compliance activities?

   a. Taking remedial actions described under section 1.141-12 of the Income Tax Regulations? ☐ Yes ☐ No

   b. Entering into a closing agreement under the Tax-Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31? ☐ Yes ☐ No

PART II - GENERAL RECORDKEEPING

6. Do you maintain records necessary to support the tax-exempt status of the bond financing? ☐ Yes ☐ No

   If yes, for how long?

   ☐ Less than life of bonds

   ☐ Life of bonds

   ☐ Life of bonds plus 3 years

7. How do you maintain your bond records?

   ☐ On Paper ☐ Electronic media (e.g.,CD, disks, tapes) ☐ Combination of paper and electronic

8. Do you maintain copies of the following records:

   a. Your Federal tax or information returns (e.g., Form 8038 series returns)? ☐ Yes ☐ No

   b. Your audited financial statements? ☐ Yes ☐ No

   c. Bond transcripts, official statements and other offering documents of your bond financings? ☐ Yes ☐ No

   d. Minutes and resolutions authorizing the issuance of your bond financings? ☐ Yes ☐ No

   e. Certifications of the issue price of your bond financings? ☐ Yes ☐ No

   f. Formal elections for bond financings (e.g., election to employ an accounting methodology other than specific tracing)? ☐ Yes ☐ No ☐ N/A

   g. Appraisals, demand surveys, or feasibility studies for bond-financed property? ☐ Yes ☐ No ☐ N/A

   h. Documents related to government grants associated with construction, renovation or purchase of bond-financed facilities? ☐ Yes ☐ No ☐ N/A

   i. Publications, brochures, and newspaper articles for your bond financings? ☐ Yes ☐ No ☐ N/A

   j. Trustee statements for your bond financings? ☐ Yes ☐ No ☐ N/A

   k. Correspondence (letters, e-mails, faxes, etc.) for your bond financings? ☐ Yes ☐ No

   l. Reports of any prior IRS examinations of your entity or bond financings? ☐ Yes ☐ No ☐ N/A

PART III - INVESTMENTS AND ARBITRAGE COMPLIANCE

9. Do you maintain records documenting the allocations and earnings and investments related to your bond financings? ☐ Yes ☐ No

10. Do you maintain records for investments of your bond financing proceeds related to:

a. Investment contracts (e.g., guaranteed investment contracts)? ☐ Yes ☐ No ☐ N/A

b. Credit enhancement transactions (e.g., bond insurance contracts)? ☐ Yes ☐ No ☐ N/A

c. Financial derivatives (swaps, caps, etc.)? ☐ Yes ☐ No ☐ N/A

d. Bidding of financial products? ☐ Yes ☐ No ☐ N/A

11. Do you maintain records of the following arbitrage documents related to your bond financings:

a. Computations of bond yield? ☐ Yes ☐ No

b. Computation of rebate and yield reduction payments? ☐ Yes ☐ No

c. Form 8038-T, *Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate*? ☐ Yes ☐ No ☐ N/A

d. Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*? ☐ Yes ☐ No ☐ N/A

12. Do you have written procedures for monitoring instances that will comply with the applicable yield restriction requirements when a subsequent reinvestment of bond proceeds results in a lower investment yield. ☐ Yes ☐ No ☐ N/A

If Yes, date they were implemented? _____ (dd/mm/yyyy)

Describe in detail your procedures and how you implement them, including dates of revisions, if any. In lieu of the above description, you may attach a copy of the written procedures. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure bond financings are in compliance with federal tax requirements. *(Attach sheet with description)*

13. Do you have specific written procedures that monitor bond financings you expect will comply with the arbitrage rules as a result of the application of a temporary period exception (section 148(c) and section 1.148-2(e) of the Income Tax Regulations) or a spending exception (Regulations section 148(f)(4) and section 1.148-7(c), (d), and (e))? ☐ Yes ☐ No ☐ N/A

If Yes, date they were implemented? _____ (dd/mm/yyyy)

Describe in detail your procedures and how you implement them, including dates of revisions, if any. In lieu of the above description, you may attach a copy of the written procedures. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure bond financings are in compliance with federal tax requirements. *(Attach sheet with description)*

PART IV - EXPENDITURES AND ASSETS

14. Do you maintain records documenting the allocation of bond-financing proceeds to expenditures (e.g., allocation of bond proceeds to expenditures for the construction, renovation, or purchase of facilities you own and use in the performance of your public purpose)?	☐ Yes	☐ No
15. Do you maintain records documenting the allocations of bond-financing proceeds to bond issuance costs?	☐ Yes	☐ No
16. Do you maintain copies of requisitions, draw schedules, draw requests, invoices, bills and cancelled checks related to bond proceeds spent during the construction period?	☐ Yes	☐ No
17. Do you maintain copies of all contracts entered into for the construction, renovation or purchase of bond-financed facilities?	☐ Yes	☐ No
18. Do you maintain records of expenditure reimbursements incurred prior to issuing bonds for facilities financed with bond proceeds?	☐ Yes	☐ No
19. Do you maintain an asset list or schedule of all bond-financed facilities or equipment?	☐ Yes	☐ No
20. Do you maintain depreciation schedules for bond-financed depreciable property?	☐ Yes	☐ No
21. Do you maintain records that track your purchases and sales of bond-financed assets?	☐ Yes	☐ No

PART V - PRIVATE BUSINESS USE

22. Do you maintain records of trade or business activities by or with non-governmental entities or persons with respect to your bond-financed facilities?	☐ Yes ☐ N/A	☐ No
23. Do you maintain copies of the following agreements when entered into with respect to your bond-financed property:		
a. Management and other service agreements?	☐ Yes ☐ N/A	☐ No
b. Research contracts?	☐ Yes ☐ N/A	☐ No
c. Naming rights contracts?	☐ Yes ☐ N/A	☐ No
d. Ownership documentation (e.g., deeds, mortgages)?	☐ Yes ☐ N/A	☐ No
e. Leases?	☐ Yes ☐ N/A	☐ No
f. Subleases?	☐ Yes ☐ N/A	☐ No
g. Leasehold improvement contracts?	☐ Yes ☐ N/A	☐ No
h. Joint venture arrangements?	☐ Yes ☐ N/A	☐ No
i. Limited liability corporation arrangements?	☐ Yes ☐ N/A	☐ No
j. Partnership arrangements?	☐ Yes ☐ N/A	☐ No

24. Do you have any additional comments on how you ensure your governmental bonds remain tax exempt after they are issued? *(Attach additional sheets, if necessary)*

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to ensure that you are complying with these laws.

The IRS may not conduct or sponsor, and an organization is not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103 and 6104.

Internal Revenue Service **Department of the Treasury**

Date:

Contact Person/ID Number:

Contact Telephone Numbers:

Response Due Date:

Employer Identification Number:

Dear Sir or Madam:

We are conducting a compliance check of your governmental bond as part of our ongoing efforts to increase voluntary compliance by governmental bond issuers. We are asking you to answer questions concerning your post-issuance bond compliance procedures.

General Information

Governmental bonds are tax-exempt bonds issued by a State or local government which are not private activity bonds as described in section 141 of the Internal Revenue Code.

The tax-exempt status of governmental bonds remains throughout the life of the bonds if all applicable federal tax laws are satisfied while the bonds are outstanding. Various requirements apply under the Internal Revenue Code and Income Tax Regulations including information filing and other requirements related to issuance, the proper and timely use of bond-financed property, and arbitrage yield restriction and rebate requirements.

To comply with these and any other applicable federal tax requirements, governmental bond issuers must ensure that the rules are met at the time the bonds are issued and throughout the term of the bonds. Generally, this includes the continued maintenance of records sufficient to establish compliance with all applicable federal tax requirements until three years after the final maturity of the bonds. Also, continued maintenance of records related to periods before the bonds are issued and after the bonds mature is oftentimes necessary, particularly in instances involving reimbursements of prior expenditures or refundings of prior bond issues.

What You Need To Do

Please complete the enclosed Form 14002, *Governmental Bond Financings Compliance Check Questionnaire,* and follow the instructions below for sending the questionnaire to us.

How To Send The Information To Us

Attach a copy of this letter to the front of the requested information, and send the information to us, by the due date shown above, using one of the following methods:

- Mail your reply to the address shown in the heading of this letter.
- Email your reply (in PDF format) or questions to teb.cpm@irs.gov and indicate "Governmental Bond Questionnaire" in the subject line. Be sure to include your name, telephone number and the best time to

reach you; as we will be replying to your questions by telephone. **Note: This email address is for replies or questions related to this letter only, we cannot respond to other information or questions.**

Failure to use the above mailing address or email address may result in processing delays. If you fail to reply by the above date, we may forward your governmental bond issue for examination consideration.

In the spaces below, please provide an official's name, title, telephone number and most convenient time for us to call should we need to speak with someone regarding your governmental bond issue.

Name of official: _____ Time: _____

Title: _____ Telephone Number: ( ) _____

More Information

Through our website at www.irs.gov/bonds, you can access materials relating to tax-exempt bonds including Publication 4079, *Tax Exempt Governmental Bonds Compliance Guide,* which provides an overview of the federal tax rules and filing requirements applicable to governmental bonds. You can find answers to frequently asked questions about record retention requirements under "Exempt Bond FAQ's." In addition, you will find an article entitled, "After the Bonds are Issued: Then What?" in Publication 4344, *Report of Recommendations - Advisory Committee on TE/GE,* intended for government officials in developing policies, procedures and systems to ensure that your bonds remain tax-exempt.

We have enclosed Publication 4386, *Compliance Checks,* which answers some frequently asked questions about compliance checks.

If you have any questions about this letter, you can contact the person named in the heading or email your questions to the address shown under **How To Send the Information to Us.**

Thank you for your cooperation.

Sincerely,

Steven A. Chamberlin
Manager, Compliance & Program Management
Tax Exempt Bonds

Enclosure(s):
Form 14002
Publication 4386

Compliance Checks

Examination, Audit or Compliance Check?

Tax Exempt and Government Entities Division

- **What is an examination? What is an audit?**

  An examination is a review of an organization's books and records. In addition, an examination may involve the questioning of third parties to determine the organization's tax liabilities. Another term for an examination is an audit.

- **What is a compliance check?**

  A compliance check is a review conducted by the IRS to determine the following:

  - Whether an organization is adhering to recordkeeping and information reporting requirements.
  - Whether an organization's activities are consistent with their stated tax-exempt purpose.

  It is a review of information and forms that we require organizations to file or maintain – for example, Forms 990, 990-T, 940, 941, W-2, 1099, or W-4. The check is a tool to help educate organizations about their reporting requirements and to increase voluntary compliance.

  The 990 series of forms are used by tax-exempt organizations, including charities, private foundations and other nonprofit organizations, to provide information required by section 6033 of the Internal Revenue Code, which includes information about their programs and activities. Information on these returns is generally disclosable to the public as provided by law.

  It should be noted that a compliance check is not an examination; it does not directly relate to determining a tax liability for any particular period.

- **What occurs during a compliance check?**

  At the beginning of a compliance check, we will inform the officer or director that the review is a compliance check and not an examination. We will not ask to examine any books and records or ask questions regarding tax liabilities. We may ask the organization whether they understand or have questions about filing obligations for required forms. We may also ask questions about an organization's activities. If, during a compliance check, we decide an examination is appropriate, we will notify the organization that we are commencing an examination before asking questions related to tax liability.

- **Is there a penalty for refusing to submit to a compliance check?**

  No. The officer or director may refuse to participate in a compliance check without penalty. However, we have the option of opening a formal examination, whether or not the organization agrees to participate in a compliance check.

- **How often can the IRS do compliance checks?**

  Because a compliance check only reviews whether an organization is adhering to record keeping and information reporting requirements and/or whether an organization's activities are consistent with its stated tax-exempt purpose and is not an examination, it is possible to have more than one compliance check for a tax year if facts and circumstances warrant.

IRS Department of the Treasury Publication **4386** (Rev 4-2006)
Internal Revenue Service Catalog Number 38771G
www.irs.gov

CHARTER AND CODE
City of
MIAMI, FLORIDA
Codified through
Ordinance No. 13066, adopted May 14, 2009.
(Supplement No. 41)

Chapter 2 ADMINISTRATION

ARTICLE XI. BOARDS, COMMITTEES, COMMISSIONS

DIVISION 14. HOMELAND DEFENSE/NEIGHBORHOOD IMPROVEMENT BOND PROGRAM OVERSIGHT BOARD*

*__Editor's note:__ Ord. No. 12177, § 3, adopted January 10, 2002, enacted provisions intended for use as division 15, §§ 2-1200--2-1206. To preserve the sequential numbering of this article, and at the discretion of the editor, said provisions have been redesignated as division 14, §§ 2-1201--2-1207.

Sec. 2-1201. Established; sunset date.

(a) There is established a limited agency and instrumentality of the city to be known as the Homeland Defense/Neighborhood Improvement Bond Program Oversight Board, which shall hereinafter be referred to as the "board."
(b) Sunset date. This board shall sunset on December 31, 2011.
(Ord. No. 12177, § 3, 1-10-02)

Sec. 2-1202. Purpose, powers and duties.

The purpose, powers and duties of the Board are:
(1) To serve in an advisory capacity to the city commission related to the monitoring of the resources derived from the issuance of general obligation bonds, approved by the electorate on November 13, 2001, for homeland defense preparedness and neighborhood improvements and enhancements for projects including those specifically identified by the city administration and set forth in informational pamphlets and media releases distributed to the public prior to said election;
(2) Monitor projects related to historic preservation and improvements for public safety, parks and recreation, and quality of life issues (greenways, street paving drainage, sidewalks and lighting);
(3) Monitor amount of funding to be dedicated for each improvement or project;
(4) Monitor each project's status for efficient use of allocated funding, and request, through the city manager, that vendors, contractors, or any other entity receiving funding from the general obligation bond issuance approved on November 13, 2001, appear before the board to answer questions regarding the status of such funded projects;
(5) Expedite the development of the following projects identified as priorities by the city commission:
a. The Little Haiti Park; and
b. City-wide road and sidewalk repairs.

Notwithstanding any provision to the contrary, the city commission, by unanimous vote, may expedite the development of any other project.
(Ord. No. 12177, § 3, 1-10-02; Ord. No. 12299, § 1, 11-19-02)

Sec. 2-1203. Membership; qualifications; terms of office; vacancies; officers; parliamentary procedures and rules of procedure; meetings; quorum; voting; attendance requirements.

(a) *Membership.* The board shall consist of 15 voting members who shall serve without compensation, but shall be reimbursed for necessary expenses incurred in official duties, as may be determined and approved by the city commission, and shall be composed as follows:
(1) Five members appointed by the mayor; and
(2) Ten members appointed by the members of the commission, with each commissioner nominating two individuals.
(b) *Qualifications.* The provisions set forth in section 2-884 shall apply to the members of the board.
(c) *Terms of office.* The terms of office of the members of the board shall be for one year, or until the mayor or the nominating commissioner leaves office, whichever occurs first. All members shall continue to serve until their successors have been appointed and qualified. The provisions of subsection 2-885(b) shall not apply to the members of the board, as it relates to the number of years a member may serve on the board.
(d) *Vacancies.* If a vacancy occurs on the board, such vacancy shall be filled as applicable by either the mayor or a nomination by the commissioner who nominated the member whose position has become vacant with subsequent appointment by the commission. Such appointment shall be effective for the remainder of the unexpired term or until the mayor or the nominating commissioner leaves office.
(e) *Officers.* The mayor shall designate the chairperson of the board. The board shall select and designate from its members a vice-chairperson, secretary, and such other officers as may be deemed necessary, who shall serve at the pleasure of the board. The vice-chairperson shall serve as chairperson in the absence of the chairperson.
(f) *Parliamentary authority and rules of procedure.* The parliamentary authority of the board shall be Robert's Rules of Order (current edition), unless the board adopts its own order of business and rules of procedure governing its meetings, and actions on matters within its jurisdiction, not inconsistent with the provisions set forth herein, which rules of procedure shall be filed with the city clerk. Copies of minutes of all board meetings shall be furnished to the mayor, commissioners and the city manager.
(g) *Meetings; quorum; and voting.* All meetings of the board shall be opened to the public. The provisions set forth in section 2-887 of this article shall apply to all members of the board as they relate to quorum and voting.
(h) *Attendance requirements.* The provisions set forth in section 2-886 of this article shall apply to all members of the board.
(Ord. No. 12177, § 3, 1-10-02; Ord. No. 12739, § 2, 11-3-05)

Sec. 2-1204. Assignment of staff.

(a) It shall be the duty of the city clerk to provide the services of an individual to keep minutes of meetings, maintain committee correspondence, post meeting notices, file reports and perform all other necessary support functions.
(b) (1) It shall be the duty of the city manager to assign individuals from the departments of parks and recreation, public works, police, fire-rescue, conferences, conventions and public facilities, planning, real estate and economic development, asset management and the

neighborhood enhancement teams as may be necessary to advise the board about ongoing and pending projects and to provide administrative support.
(2) Ensure that all projects requiring city commission approval and employing any of the funds derived from the general obligation bond issuance approved November 13, 2001, be submitted to the Board for its review and comment prior to submission to the city commission for approval.
(3) Present to the Board reports regarding the status of the projects.
(Ord. No. 12177, § 3, 1-10-02; Ord. No. 12299, § 2, 11-19-02)

Sec. 2-1205. Counsel.

The city attorney's office shall provide legal counsel to the board.
(Ord. No. 12177, § 3, 1-10-02)

Sec. 2-1206. Notices and filing of records.

The provisions set forth in section 2-888 shall apply to the board. Notice of meetings shall be posted by the city clerk at city hall and other appropriate locations after being apprised by the board of an upcoming meeting(s). Advertised public notice of meetings are not required. It shall be the duty of the city clerk to comply with applicable laws related to filing of records and section 2-889.
(Ord. No. 12177, § 3, 1-10-02)

Sec. 2-1207. Annual report.

The provisions set forth in section 2-890 of this article shall apply related to the submittal of annual reports.
(Ord. No. 12177, § 3, 1-10-02)
Secs. 2-1208--2-1214. Reserved.

DEPARTMENT OF CAPITAL IMPROVEMENTS

PROJECT OVERVIEW FORM

UPDATE

1. DATE: 8/28/07 DISTRICT: 5

NAME OF PROJECT: WILLIAMS PARK RECREATIONAL BUILDING IMPROVEMENTS PROJECT

INITIATING DEPARTMENT/DIVISION: Capital Improvements Program

INITIATING CONTACT PERSON/CONTACT NUMBER: David Mendez (305) 416-1240

C.I.P. DEPARTMENT CONTACT: Ola O. Aluko (305) 416-1280

RESOLUTION NUMBER: _____ CIP/PROJECT NUMBER: B-75991

2. BUDGETARY INFORMATION: **Are funds budgeted?** ☒YES ☐NO **If yes,**

TOTAL DOLLAR AMOUNT: $1,886,213

SOURCE OF FUNDS: $877,200 HD Neighborhood Park Series/$375,000 HD NE 2nd Avenue Improvements Series/$634,013 HD Series II

If grant funded, is there a City match requirement? ☐ YES ☐ NO

AMOUNT: _____ EXPIRATION DATE: _____

Are matching funds Budgeted? ☐ YES ☐ NO Account Code(s): _____

Estimated Operations and Maintenance Budget _____

3. SCOPE OF PROJECT:

Individuals / Departments who provided input: _____

DESCRIPTION OF PROJECT: Project scope includes 1) Proposed Building Expansion: Park Manager office with filing space, sports equipment storage, multi-purpose room expansion. Total addition area is approximately 2,000 s.f. 2) Existing Building Renovation: Renovate kitchen, renovate restrooms, provide new accessible restroom, computer room, art & crafts classroom**(Continuation of scope attached)**

ADA Compliant? ☐ YES ☐ NO ☐ N/A

Approved by Audit Committee? ☒ YES ☐ NO ☐ N/A **DATE APPROVED:** 8/21/07

Approved by Bond Oversight Board? ☐ YES ☐ NO ☐ N/A **DATE APPROVED:** 8/28/07

Approved by Commission? ☐ YES ☐ NO ☐ N/A **DATE APPROVED:** _____

Revisions to Original Scope? ☐ YES ☐ NO (If YES see Item 5 below)

Time Approval ☐ 6 months ☐ 12 months **Date for next Oversight Board Update:** _____

4. CONCEPTUAL COST ESTIMATE BREAKDOWN

Has a conceptual cost estimate been developed based upon the initial established scope? ☐ YES ☐ NO **If yes,**

DESIGN COST: _____

CONSTRUCTION COST: _____

Is conceptual estimate within project budget? ☐ YES ☐ NO

If not, have additional funds been identified? ☐ YES ☐ NO

Source(s) of additional funds: _____

Approved by Commission? ☐ YES ☐ NO ☐ N/A **DATE APPROVED:** _____

Approved by Bond Oversight Board? ☐ YES ☐ NO ☐ N/A **DATE APPROVED:** _____

5. REVISIONS TO ORIGINAL SCOPE

Individuals / Departments who provided input: _____

Justifications for change: _____

Description of change: _____

Fiscal Impact ☐ YES ☐ NO HOW MUCH? _____

Have additional funds been identified? ☐ YES ☐ NO

Source(s) of additional funds: _____

Time impact _____

Approved by Commission? ☐ YES ☐ NO ☐ N/A **DATE APPROVED:** _____

Approved by Bond Oversight Board? ☐ YES ☐ NO ☐ N/A **DATE APPROVED:** _____

6. COMMENTS: _____

APPROVAL: _____ DATE: 8/28/07

BOND OVERSIGHT BOARD

Enclosures: Back-Up Materials ☒ YES ☐ NO

CITY OF MIAMI, FLORIDA

INTER-OFFICE MEMORANDUM

To: Ola O. Aluko, Director
Capital Improvements Program

Date: February 17, 2009 File: B-75991A

Subject: PAF for Williams Park Community Building

From: Bryan Thompson, R.A.
Project Manager
Capital Improvements Program

References:

Enclosures: PAF dated 2/17/09

Your signature is required on the attached PAF to activate the above named project:

Description:

The project scope consists of, but is not limited to the following:

- New community center
- Remodel Pool House to satisfy accessibility requirements and provide a year-round changing facility
- Remodel a portion of the bleachers to satisfy accessibility requrements
- Remodel a portion of the site surrounding the new community center to prevent flooding
- Remodel the parking area to alleviate drainage problems

Justification:

The existing community center at Williams Park is near the end of its intended lifespan and does not meet the needs of the surrounding community. It is too small, does not have enough program variety and is not an inviting building. Furthermore, there are areas surrounding the community building that do not drain properly that need to be corrected; the existing pool house has several accessibilty deficiencies; and the bleachers also have accessibility deficiencies.

Funding:

The total funding of $2,428,569.00 is available for the project from the cancelled B-75991 project. A breakdown of the funding is as follows:

- 2002 Homeland Defense Bond (series 1) - $1,077,552.00
- Sunshine State Financing Commission Number 2 - $650,000.00
- 2002 Homeland Defense Bond (series 3) - $701,017.00

BGT/bgt

Cc: David J. Mendez, P.E., Assitant Director, Capital Improvements Program (CIP)
Gary Fabrikant, Assitant Director, Capital Improvements Program (CIP)
Yvette Smith, CIP Administrator, Capital Improvements Program (CIP)
Marcel Dougé, R.A., Senior Project Manager, Capital Improvements Program (CIP) MD

PROJECT ANALYSIS FORM

Capital Improvements & Transportation

CIP ☑ NON-CIP ☐

Date Prepared:	17-Feb-2009
VERSION	ORIGINAL

PROGRAM: 331-Parks and Recreation AREA: 2-Recreation & Culture

PROJECT NAME: **Williams Park Community Building**		PROJECT NO:	B-75991A
ADDRESS / LOCATION: 1717 NW 5 Avenue.		DISTRICT:	5
PROJECT TEAM: Vertical		PROJECT CONTRACTED COST:	
CATEGORY: Parks and Recreation		PROJECT EST. COST:	$ 2,434,031.00
CLIENT DEPT: 58-P&R-Parks and Recreation		CURRENT FUNDS:	$ 1,727,552.00
CLIENT CONTACT: Ed Blanco	TEL.: (305) 416-1253	FUTURE FUNDS:	$ 701,017.00
DESIGN MANAGER: Bryan Thompson (CIP)	TEL.: 305-4161049	FUND SHORTFALL:	$ (5,462.00)
CONSTR. MANAGER: Mike Tyler (PBSJ/CIP)	TEL.: 305-416-1072	PROCUREMENT:	JOC
EST. DESIGN START: 02/02/09	EST. BID ADV.:	EST. CONSTRUCTION START:	09/21/09
EST. DESIGN END: 08/17/09	EST. AWARD DATE:	EST. CONSTRUCTION END:	06/08/10

PROJECT ESTIMATED AND ACTUAL COSTS

PRODUCTION PHASE (3-DES) Prime Consultant: 0000 To be Assigned	CODE	% of Const	Estimated Design	% of Const.	Contracted Design
1 Outside Consultant - Prime Basic Design Fee	1.01	7.9%	$ 152,330.00		
2 CIP - Design Management	1.04	5.0%	$ 96,597.00		
3 General Production Phase contingency	1.01	1.2%	$ 22,300.00		
4					
PRODUCTION TOTALS			Estimated $ 271,227.00		Contracted

CONSTRUCTION PHASE (4-CON) Prime Contractor: 0000 To be Assigned	CODE	Estimated Construction by PM	Contracted Construction (Formal Bid, Informal Bid or JOC Method)
1 Construction Cost (Prime Contractor)	2	90% $ 1,746,937.00	
2 Construction Contingency Allowance	2	10% $ 185,000.00	
3			
CONSTRUCTION TOTALS		Estimated $ 1,931,937.00	Contracted

CONSTRUCTION ADMINISTRATION (8-CEO)	CODE	Estimated CEO	Contracted CEO
1 Construction Engineering Observation (CEO) Consultant	3.01		
2 Construction Management by CIP Construction Manager	3.04	5.0% $ 96,597.00	
3 Construction Inspections by CIP Inspector	3.02		
4 JOC Administration - The Gordian Group	3.03	2.0% $ 37,673.00	
5			
CONSTRUCTION ADMINISTRATION TOTALS		Estimated $ 134,270.00	Contracted

ADMINISTRATIVE EXPENSES (6-ADM)	CODE	Estimated ADMIN	Contracted ADMIN
1 CIP Department (General Administrative Fees))	4	5.0% $ 96,597.00	
2			
ADMINISTRATIVE EXPENSES TOTALS		Estimated $ 96,597.00	Contracted

ADDITIONAL PROJECT TASKS	CODE	Estimated TASKS	Contracted TASKS
1			
ADDITIONAL PROJECT TASKS TOTALS		Estimated	Contracted

B-75991A PROJECT GRAND TOTAL	Estimated	Contracted
	$ 2,434,031.00	

PROJECT SCOPE

New approximately 5,000 square foot Community Building and miscellaneous site improvements. Building will include offices, multipurpose, art and crafts room, computer room, classrooms and restrooms. Site improvements will include remediation of drainage around new building and at parking lot, correction of accessibility deficiences at pool house and bleachers.

Operating Cost Associated with Project:	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5

Notes

Moved $2,428,569 from B-75991 (cancelled) as per PM's request 02/13/09

FUND SOURCES

	AWARD NAME AND NUMBER		AVAILABLE	FUTURE
1058	385200-1 2002 Homeland Defense Bonds (Series 1)	331419 Neighborhood Park Improvements	$ 1,077,552.00	
	385200-3 2002 Homeland Defense Bonds (Series 3)	331419 Neighborhood Park Improvements		$ 701,017.00
1496	888961 Sunshine State Financing Commission Number 2	331419 Neighborhood Park Improvements	$ 650,000.00	
	B-75991A FUND GRAND TOTAL		ACTUAL $ 1,727,552.00	PROJECTED $ 701,017.00

VALIDATION

Initiated by:	**Bryan Thompson** Project Manager	Signature	Date: 2-17-09
Approved by:	**Marcel Douge** Senior Project Manager	Signature	Date: 2.17.09
Reviewed by:	**David Mendez** Assistant Director: Capital Improvements	Signature	Date: 2/24/09
Reviewed by:	**Yvette Smith** CIP Budget Administrator	Signature	Date: 2/25/09
Verified by:	**Edwige De Crumpe** Program Controls Staff	Initials Signature	
Accepted by :	**Ola Aluko** Director: Capital Improvements	Signature	Date: 2/25/09
Approved by :	**Ernest Burkeen** Director: Parks & Recreation	Signature	Date: 2/25/09

ORIGINAL TO: **Melanie Whitaker / 8th Floor** Initials

Notes

Receipt of PAF by Danette Perez - CIP Public Relations Coordinator

2/25/09

Project MUST be Presented to the Bond Oversight Board

Date Received / Signature or Initials

Executed PAF MUST be electronically distributed to the following individuals:

Director of the Client Department, Yvette Maragh, Edwige De Crumpe, Senior Project Manager and Project Manager.

Williams Park
Construction cost estimate

2/13/2009

	sq. ft		cost est.	method	unit cost
Community Building	5232		$1,124,880.00	sf cost	$215
Pool house remodeling			$70,120.00	lump sum	
Plaza landscape / hardscape			$75,500.00	lump sum	
Parking drainage remediation			$95,000.00	lump sum	
Drainage remediation near swings			$35,000.00	lump sum	
Bleacher accessibility remodel			$12,000.00	lump sum	
Building and site demolition			$100,000.00	lump sum	
subtotal			$1,512,500.00		
overhead (5%)		+	$75,625.00		
subtotal			$1,588,125.00		
profit (10%)		+	$158,812.50		
total			$1,746,937.50		

PROJECT ANALYSIS FORM
Capital Improvements & Transportation

Date Prepared:	3-Aug-2007
VERSION:	REV01

PROGRAM: 331 - Parks & Recreation | AREA: Recreation & Culture - 2

PROJECT NAME: Williams Park Improvements		PROJECT NO:	B-75991
ADDRESS / LOCATION: 1717 NW 5th Avenue		DISTRICT:	5
PROJECT TEAM: Vertical		PROJECT CONTRACTED COST:	$ 811,089.23
CATEGORY: Parks & Recreation		PROJECT EST. COST:	$ 1,886,213.00
CLIENT DEPT: Parks & Recreation - 58		CURRENT FUNDS:	$ 1,252,200.00
CLIENT CONTACT: Maria Perez	TEL.: (305) 416-1314	FUTURE FUNDS:	$ 634,013.00
DESIGN MANAGER: Edgar Munoz	TEL.: (305) 416-1275	FUND SHORTFALL:	
CONSTR. MANAGER: Ed Herald (VT)	TEL.: (305) 416-1290	PROCUREMENT:	JOC
EST. DESIGN START: 01/18/05	EST. BID ADV.:	EST. CONSTRUCTION START:	11/19/06
EST. DESIGN END: 09/25/06	EST. AWARD DATE:	EST. CONSTRUCTION END:	07/29/07

PROJECT ESTIMATED AND ACTUAL COSTS

PRODUCTION PHASE (3-DES)

Prime Consultant:

		CODE	% of Const	Estimated Design	% of Const.	Contracted Design
1	Outside Consultant - Basic Design Fee	01.01	4.2%	$ 72,496.00	10.5%	$ 73,589.50
2	Outside Consultant - Additional Design Services	01.01	0.4%	$ 6,304.00	1.1%	$ 7,481.50
3	CIP In-House - Basic Design Fee	01.02		$ -		$ -
4	CIP - Production Management	01.02		$ -	0.0%	$ -
5	General Production Phase Contingency	01.01	18.0%	$ 14,204.00	11.3%	$ 9,123.59
6	Special Fees / Assessments - MDWASD	01.01		$ -		$ 2,809.41
7				$ -		$ -
8				$ -		$ -
9				$ -		$ -
10				$ -		$ -
11				$ -		$ -
12				$ -		$ -
	PRODUCTION TOTALS			Estimated $ 93,004.00		Contracted $ 83,880.41

CONSTRUCTION PHASE (4-CON)

Prime Contractor:

		CODE	Estimated Construction by PM		Contracted Construction (Formal Bid, Informal Bid or JOC Method)	
1	Construction Cost (Prime Contractor)	02		$ 1,552,822.73		$ 697,829.38
2	Construction Contingency Allowance	02	10.0%	$ 155,282.27	144.8%	$ 1,010,275.62
3	Additional Services / Change Orders (Prime Contractor)			$ -		$ -
4	Other Construction Related Services					$ -
5				$ -		$ -
6				$ -		$ -
7				$ -		$ -
8				$ -		$ -
	CONSTRUCTION TOTALS			Estimated $ 1,708,105.00		Contracted $ 697,829.38

CONSTRUCTION ADMINISTRATION (8-CEO)

		CODE	Estimated CEO		Contracted CEO	
1	Construction Engineering Observation (CEO) Consultant	03.01	2.4%	$ 40,570.42		$ -
2	Construction Engineering Observation CIP/Transportation			$ -		$ -
3	JOC Administration - The Gordian Group (Always 1.5%)	03.03	1.5%	$ 25,621.58	1.5%	$ 10,467.44
	CONSTRUCTION ADMINISTRATION TOTALS			Estimated $ 66,192.00		Contracted $ 10,467.44

ADMINISTRATIVE EXPENSES (6-ADM)

		CODE	Estimated ADMIN		Contracted ADMIN	
1	CIP Department (Mgmt./Budget/Procurement/Comm.):	04	1.1%	$ 18,912.0	100.0%	$ 18,912.0
	ADMINISTRATIVE EXPENSES TOTALS			Estimated $ 18,912.00		Contracted $ 18,912.00

ADDITIONAL PROJECT TASKS	CODE	Estimated TASKS	Contracted TASKS
1 EQUIPMENT (5-EQU):		$ -	$ -
2 PLANNING (2-PLN):		$ -	$ -
3 ACQUISITION EXPENSES (1-LAQ) Land:		$ -	$ -
4 ACQUISITION EXPENSES (1-LAQ) Transaction:		$ -	$ -
5 PROGRAM MANAGEMENT (0-MGT):		$ -	$ -
ADDITIONAL PROJECT TASKS TOTALS		Estimated $ -	Contracted $ -

B-75991 PROJECT GRAND TOTAL	Estimated	Contracted
	$ 1,886,213.00	$ 811,089.23

PROJECT SCOPE

1) Proposed Building Expansion: Park Manager Office with filing space, sports equipment storage, multi- purpose room expansion. Total Addition Area is approximately 2,000 SF. 2) Existing Building Renovations: Renovate Kitchen, renovate restrooms, provide new accessible restroom, computer room, arts & crafts and classroom. 3) New landscaping and irrigation around the building. 4) determine solutions to Accessibility Evaluacion Report at areas not directed related to the project (Bid add alternate). 5) Pool Building: Interior/Exterior painting, provide lockers, windows and security bars to be replaced, renovate vestibule, renovate plaza connecting recreation building with pool building, provide a shade structure adjacent to pool, provide drainage system for plaza and around recreation building.

Operating Cost Associated with Project:	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5

FUND SOURCES

AWARD NAME AND NUMBER		AVAILABLE	FUTURE
HD Neighborhood Park Series 1 - 1058	Please See Note Below	$ 877,200.00	$ -
HD NE 2nd Ave. Improv. Series - 1080	Please See Note Below	$ 375,000.00	$ -
HD - Homeland Defense Bonds (Series 2) -FD385200-2	Please See Note Below	$ -	$ 634,013.00
		$ -	$ -
		$ -	$ -
		$ -	$ -
		$ -	$ -
		$ -	$ -
B-75991 FUND GRAND TOTAL $ 1,886,213.00		ACTUAL $ 1,252,200.00	PROJECTED $ 634,013.00

VALIDATION

Initiated by: **Munoz, Edgar** — Project Manager — Signature — Date: 8/3/07

Approved by: **Ola O. Aluko** — Director **Capital Improvements** — Signature — Date: 8/6/07

Reviewed by: **Yvette Maragh** — CIP Budget Administrator — Signature — Date: 8/7/07

Verified by: **Edwige De Crumpe** / Program Controls Staff — Initials

Accepted by : **Ernest Burkeen** — Director : **Parks & Recreation** — Signature — Date: 8/8/07

ORIGINAL TO: **Melanie Whitaker / 10th Floor South Conference Room** — Initials

Notes

Receipt of PAF by Danette Perez - CIP Public Relations Coordinator — Date Received / Signature or Initials

Project MUST be Presented to the Bond Oversight Board

Executed PAF MUST be electronically distributed to the following individuals:

Director of the Client Department, Yvette Maragh, Edwige De Crumpe, Senior Project Manager and Project Manager.

only very valuable, but subsequent to a state rule, the training tower is now a requirement with specific standards for a certificated training facility. This is a new standard. We do not meet the standard, so this is required to remain as a certified training facility within the state. And these are two samples of more or less, what you would see the end product looking like, and then one of the props or simulation aids you'll see to the right is supposed to be a vehicle. It has the overall shape of a vehicle, but it is fed by gas. It's basically an appliance, and it allows the firefighters to practice with car fires and there's a few other simulation aids also so that they can train, and that's also required by that Rule 4837 that was imposed a year and a half or two years ago. Currently, this is proposed to be used at our training facility in Coconut Grove, where we do most of our other training. And there's an estimated 25 percent completion on the design phase. We're estimating somewhere around June 2010 to be complete on this project.

5. Armbrister Park Boundless Playground

Ed Blanco, Parks Department, reported that the project was completed. It was a $250,000 project, and in addition to that, which you don't see in the pictures, we also added some swings on the other side of the play ground, at an additional $50,000, swings with a rubber surface. So this whole project is about a $300,000 project.

6. Athalie Range Park – Mini Stadium Complex

Eileen Broton reported that the project has been designed and is ready to go out for bid. The project is in the permitting stages. The Parks Department will make arrangements for the activities when the park must be closed for the construction.

Ed Blanco, Parks Department, reported that the permitting has been completed. The project is currently being bid out. The bid award date has been set for February 9, with an estimated construction to begin late March or early April.

7. Williams Park Recreation Building Improvements

Eileen Broton reported that this is not an improvement. It's going to be a new building, and there was a charrette held January 22 and it was highly announced to the public.

Ola Aluko, director, CIP, reported that there was a charrette last Thursday and the public received the plans very well, and we were given a vote of confidence to move forward. As of today, I believe we gave the architect an NTP to submit his proposal, and hopefully, within the next couple of days, we'll get a proposal for the design, and we'd like to move forward with the construction. This is another case where the original project was planned to be a renovation. We were going to add spaces to the park. The community made some comments to staff, to the administration and we listened to the community and we realized that with today's prices that we're getting in the construction industry, we can actually build a new building at the same cost that we were originally going to renovate and add spaces to the building. So we're actually doubling the size. The existing

facility is roughly 2,100 square feet and we are designing a new 5,000 square foot facility at the same cost of renovation. And the community was very happy.

8. Virrick Park Pool Building Renovations

Eileen Broton reported that the project is on schedule. The project scope involves maintaining the shell and the roof, but working with the rest of the building to renovate it and also to install the decking around the pool.

Ola Aluko, director, CIP, reported that this is another project where we are moving forward with this renovation, however, recently, we did meet with the Parks Department, and we are seriously considering a new Virrick Park pool. We're looking at the funds that we have available, and we're addressing the immediate needs, i.e. ADA needs, so that the pool can continue to run, continue to be operable. But it's likely we'll move forward and construct a new Virrick Park pool, based on the funds we have on hand, instead of spending all of those funds on a renovation. This is another instance where we have enough funds to deliver a brand-new facility.

V. CHAIRPERSON'S OPEN AGENDA:

VI. ADDITIONAL ITEMS:

- Project Activation Form Estimates

Ola Aluko, director, CIP, discussed estimates provided for projects on project activation forms (PAF). Mr. Aluko explained that once the projects receive a contracted amount, the contracted figure is not brought back to the Board. Concerns were raised by Jose Solares regarding this process. Mr. Aluko has agreed to continue submitting best estimates within industry standards. However, when a contracted amount has been reached, it will be brought back to the Board for its information.

- Moore Park Master Plan Charrette and New Building

HD/NIB MOTION 09-03

A MOTION TO ADD THE MOORE PARK MASTER PLAN CHARRETTE AND NEW BUILDING ITEM TO THE BOARD MEETING CURRENTLY SCHEDULED FOR FEBRUARY 24, 2009.

MOVED:	M. Cruz
SECONDED:	P. Cisneros
ABSENT:	H. Arza, L. Cabrera, K. Apfel, C. Matos, J. Reyes

Note for the Record: Motion passed by unanimous vote of all Board Members present.

I. APPROVAL OF THE MINUTES OF THE MEETING OF APRIL 22, 2008.

II. UPDATES

1. Virrick Park Library Addition

Eileen Broton reported that the project is completed as of March 2008, and the department is in the process of completing the punch list items. The total cost of the project was $1.175 million, which was more than anticipated, but the additional funding was not paid with bond funds. The extra money was needed for additional consultant services. There was an issue with the fire alarm system that required redesigning of electrical panels. Because of those delays, additional time was needed with the consultant, which resulted in the need for additional funds.

Sandra Vega, Project Manager, CIP Department, reported that the project is 100 percent completed and documents are being closed out. The Dade County Library System is the client. At this moment, they already have their CO.

2. Virrick Park Pool Building Renovation

Eileen Broton reported that the building is still in operation but needs to be renovated and made ADA compliant. A consultant will have to be hired to determine if the building should be remodeled or demolished. After this assessment and analysis, the project will probably be re-scoped and additional funds, if necessary, will be sought from other services.

Andre Bryan, Project Manager, CIP Department, reported that the facility was constructed in 1961. The original fixtures still exist and need to be repaired. In addition to that, the facility is not ADA compliant. There is no handicap-accessible ramp to the facility, and there are no handicap-accessible toilet stalls. In addition to that, the City needs to examine the facility to determine if it's feasible to replace all of the items and remodel the facility or demolish the facility and construct a new building. The purpose of hiring the consultant is to make this determination.

3. Williams Park Recreational Building Modifications

Eileen Broton reported that 2,160 square feet is being added to the existing pool building and the facility, which means it will also be upgraded to meet all ADA and current codes. Construction is scheduled to begin next month.

David Méndez, CIP Assistant Director, reported that construction is anticipated to begin by June or early July at the latest, with construction estimated for six to nine months.

4. Buena Vista East Historic District – Streetscape Improvements Phase I

Jorge García, Project Manager, CIP Department, reported that the project does not need additional funds to be completed. Substantial completion of the project has been achieved. There are currently two pending items on the projects, which are expected to be completed this week. The total construction cost of the project is $1,020,000. Construction completion is anticipated for May 2008.

Redacted Example for IMLA Workshop:

FIRST AMENDMENT TO LEASE AGREEMENT
(PARK PROJECT)

THIS FIRST AMENDMENT TO LEASE AGREEMENT (MIAMI SCIENCE NOT-FOR-PROFIT USER PROJECT) ("First Amendment") is made and entered into this _____ day of _____, 2009, by and between the CITY OF MIAMI, a municipal corporation of the State of Florida (the "City"), and (Not-for-Profit User of Bond-Financed Property/Facility), a Florida not-for-profit corporation (the "Not-for-Profit User").

W I T N E S S E T H:

WHEREAS, on December 11, 2008, the City Commission of the City passed and adopted Resolution No. R08-0707, approving the terms of, and authorizing the City Manager to execute, a Lease Agreement between the City and the Not-for-Profit User to lease to the Property/Facility approximately four (4) acres of land located in ****Park (a/k/a "Park"), more particularly described in Exhibit A attached hereto and incorporated herein (the "Site"), for the development, construction, management and operation of a first class accredited **** facility; and

WHEREAS, the City and the Not-for-Profit User entered into that certain Lease Agreement (Park Project) dated as of April 6, 2009 (the "Lease"), pursuant to which the Not-for-Profit User leases the Site from the City, for an initial term of thirty (30) years, with automatic renewal terms and on the other terms and conditions set forth therein; and

WHEREAS, the City and the Not-for-Profit User desire to modify certain provisions of the Lease, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Not-for-Profit User hereby agree that the foregoing recitals are true and correct, and further agree as follows:

1. Definitions. All capitalized terms used in this First Amendment shall have the definitions ascribed to such terms in the Lease, unless defined or amended in this First Amendment. The term "Lease", as used in the Lease, shall be and is hereby amended to refer to the Lease, as amended hereby.

* * * *

6. Bond Covenants.

(a) A new definition is hereby added to Section 1.1, as follows:

"(jjjj) Homeland Defense/Neighborhood Capital Improvement Projects Bond Program" shall mean the City's "Homeland Defense/Neighborhood Capital Improvement Projects Bond

Program" approved by a referendum of City voters on November 13, 2001 for the City's issuance of $255 million in limited ad valorem tax bonds for homeland security, neighborhood improvements, capital projects and infrastructure improvements, of which the City allocated a total of $3,500,000 to the Not-for-Profit User for its portion of the Park Project."

(b) Article IV is amended to add a new Section 4.5 as follows:

"Section 4.5 Continuous Duty to Comply with Homeland Defense/Neighborhood Capital Improvement Projects Bond Program and Building Better Communities General Obligation Bond Program. The Parties acknowledge that the Not-for-Profit User has entered into certain grant and funding agreements with the City regarding the Homeland Defense/Neighborhood Capital Improvement Projects Bond Program and with the County regarding the Building Better Communities GOB Agreements that require continuous compliance with U.S. Internal Revenue Code requirements, as amended from time to time, for uses of proceeds of tax-exempt limited ad valorem and general obligation bond financings. If for any reason the Not-for-Profit User, any Leasehold Mortgagee, or any new entity for transfer of the Not-for-Profit User Leased Premises (on the Site) experience(s) any difficulty beyond the reasonable control of the Not-for-Profit User in fulfilling such continuing compliance requirements, the Parties shall meet to address the problems and use good faith diligent efforts to resolve any issues and make appropriate adjustments in order to maintain the tax-exempt status of the respective City Homeland Defense/Neighborhood Capital Improvement Projects Bond Program and County Building Better Communities General Obligation Bond Program. The Not-for-Profit User acknowledges, agrees, and covenants that no tax-exempt bond proceeds shall be used for the planning, design, construction, operation, or management of any of the commercial use areas, including but not limited to any areas to be used for the commercial components of the Ancillary Uses. The Not-for-Profit User further acknowledges, agrees, and covenants that the future Management Agreement shall contain continuing tax-exempt bond compliance covenants."

(c) Section 16. 1., Assignment and Subletting of Leased Premises, is hereby amended as follows:

The last sentence of the first paragraph is amended to read as follows: "For purposes of this Section, any change (a) in the status of the Not-for-Profit User so that it shall cease to be a not-for-profit entity under Section 501(c)(3) of the Internal Revenue Code,

and/or (b) in the uses of the Leased Premises so that such use(s) will no longer comply with the City's Homeland Defense/Neighborhood Capital Improvement Projects Bond Program and/or the County's Building Better Communities General Obligation Bond Program compliance requirements, shall constitute an unauthorized Transfer."

The last provision of the last sentence of the second paragraph is amended to read as follows: "(d) the Not-for-Profit User has provided to the City, for its review and approval, not less than fifteen (15) days in advance of the actual transfer, such documents relating to the Transfer as the City may reasonably request including, but not limited to, the relevant experience of the new entity, makeup of the new entity, evidence of not-for-profit status under Section 501(c)(3) of the Internal Revenue Code of the new entity, and evidence that the uses of the Leased Premises by the new entity will be in compliance with the City's Homeland Defense/Neighborhood Capital Improvement Projects Bond Program and/or the County's Building Better Communities General Obligation Bond Program compliance requirements."

(d) Section 17.3, Rights of Leasehold Mortgagees. A new provision (v) is hereby added to subsection (e) to read as follows:

"(iv) Notwithstanding provision (iii) above regarding designation as a Section 501(c)(3) not-for-profit corporation under the Internal Revenue Code, as amended, and Section 17.3(d) above, any such lessee under such new lease shall become automatically responsible for complying with the City's Homeland Defense/Neighborhood Capital Improvement Projects Bond Program and/or the County's Building Better Communities General Obligation Bond Program compliance requirements."

(e) Section 20.1 Events of Default – Not-for-Profit User. A new provision (v) is hereby added to subsection (a) to read as follows:

"(v) The failure of the Not-for-Profit User, a Leasehold Mortgagee or its designee, or any new lessee to comply with the use requirements for the Leased Premises under the City's Homeland Defense/Neighborhood Capital Improvement Projects Bond Program and/or the County's Building Better Communities General Obligation Bond Program compliance requirements."

* * * * *

8. Miscellaneous.

(f) This First Amendment shall be construed and governed in accordance with the laws of the State of Florida.

(g) This First Amendment may be executed in any number of counterparts and by the separate parties hereto in separate counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(h) Each party hereby represents and warrants to the other party that (i) it has the full right and authority to enter into this First Amendment, and (ii) this First Amendment is a binding and valid document enforceable in accordance with its terms.

(i) This First Amendment shall be deemed a part of, but shall take precedence over and supersede any provisions to the contrary contained in the Lease. Except as modified hereby, all of the provisions of the Lease, which are not in conflict with the terms of this First Amendment, shall remain in full force and effect, and, as modified hereby, the Lease is hereby ratified and confirmed in all respects.

(j) This First Amendment shall be binding upon the parties hereto and their respective successors and permitted assigns.

*****

FEDERAL TAX UPDATE:
10 THINGS TO DO AFTER THE BONDS ARE ISSUED

Bond counsel can be expected to carefully monitor compliance with all federal income tax requirements while a tax-exempt bond issue is being structured through the time that the bonds are issued.[1] Afterwards, the amount of contact that the issuer has with its bond counsel varies significantly, and there may be little or no contact at all. The purpose of this outline is to provide issuers a series of suggestions for post-issuance periods, while bond counsel is not present, to assist in ensuring compliance with the continuing tax requirements.

I. ACTIONS REQUIRED IMMEDIATELY AFTER BOND ISSUANCE

A. **Timely filing of Internal Revenue Service (IRS) Form 8038-G (governmental use bonds) or 8038 (tax-exempt private activity bonds)**.

1. Bond counsel usually oversees the timely filing of Form 8038-G or 8038 but this filing requirement is sometimes overlooked. The issuer should not rely only on bond counsel but should ensure itself that the Form is timely filed.
2. Form 8038-G/8038 is due the 15th day of the second calendar month after the end of the calendar quarter in which the bonds are issued. For example, if the bonds are issued during the second calendar quarter of the year (April through June), the Form is due on August 15 of that year.
3. The IRS has provided procedures in the event of a late filing of Form 8038-G/8038 in Revenue Procedure 2002-48.
4. To ensure a timely filing of Form 8038-G/8038, the Form should be filed immediately upon the closing of the bond issue.

B. **Reimbursement allocations**.

1. An issuer is permitted to reimburse itself from bond proceeds for certain project expenditures paid before the bonds are issued. A reimbursement allocation takes the form of an accounting entry and transfer of bond proceeds from a project or construction fund to the fund or account from which the original expenditure (i.e., the expenditure to be reimbursed) was paid.
2. Generally, the issuer must have adopted a "declaration of official intent" to reimburse pre-issuance expenditures not later than 60 days after those expenditures were paid. (An exception permits the reimbursement of "preliminary expenditures" – generally certain soft costs – without such a declaration.) Except in the case of preliminary expenditures, the reimbursement from bond proceeds must be made not later than 18 months after the later of the date the expenditures were paid or the date the project was placed in service, but when relying on the placed-in-service

[1] Unless otherwise noted, all references to "bonds" are to tax-exempt bonds.

date it is also necessary that the reimbursement be made within three years after the expenditure was paid.

3. Because the time limit for reimbursement is based on the date of the reimbursement allocation (and is not based on the issuance date of the bonds), the reimbursement allocation should be made immediately upon or after issuance of the bonds. A helpful rule provides that a reimbursement allocation that is made within 30 days after issuance of the bonds may be treated as made on the issue date of the bonds.

II. ADOPT WRITTEN PROCEDURES TO ENSURE ONGOING COMPLIANCE WITH TAX REQUIREMENTS

A. **Recommended by the IRS**. While the tax law does not require an issuer of tax-exempt bonds to adopt written procedures intended to ensure compliance with ongoing tax requirements, the IRS has concluded that these procedures will significantly increase the likelihood of compliance and strongly encourages their adoption. This encouragement is reflected in the IRS's recently distributed "Governmental Bond Financings Compliance Check Questionnaire" (the Questionnaire) which contains several questions regarding the issuer's implementation of such procedures. (See Attachment A for a copy of this Questionnaire.) Further, if the IRS were to audit a bond issue, the fact that the issuer adopted written procedures for the compliance with tax requirements would likely be a positive factor in dealing with the IRS, particularly if the IRS auditor were to find one or more minor errors in compliance -- the adoption of procedures should reflect a good faith effort to comply.

B. **Tailor the procedures**. The written procedures should be tailored to the circumstances of the issuer (e.g., the various personnel positions and the responsibilities of each) and the nature of the bond issue (e.g., governmental use bonds, qualified 501(c)(3) bonds, exempt facility bonds, etc.).

C. **Address all post-issuance requirements**. The procedures should document the intended means of complying with all post-issuance requirements applicable to the bonds. These requirements are generally described throughout this outline. The attached copy of the Questionnaire also provides a useful series of questions regarding the issuer's written procedures, which can serve as a partial checklist for the matters that should be addressed by the procedures. A primary goal of the procedures should be the assignment of responsibility of the various requirements to various positions/personnel of the issuer. In making these assignments, consideration must be given to the fact that most of these requirements continue throughout the term of the bonds (possibly 25 years or longer) and the complete turnover in personnel that can be anticipated in this period.

D. **Bond counsel can help**. While the drafting of such issue- and issuer-specific procedures is generally outside the scope of responsibility of a bond counsel engagement, bond counsel can be very helpful in preparing these procedures.

III. RETAIN RECORDS RELATING TO BONDS

A. **Issuer must be able to prove compliance**. *If the tax-exempt status of a bond issue is examined by the IRS, the issuer has the obligation of proving that all tax requirements have been satisfied. In order to establish the necessary facts, the issuer must be able to produce the records described below.*

B. **Required records**. The records that may be required by the IRS, and thus must be maintained by the issuer, include the following:

1. Bond transcripts, including all tax certificates executed upon issuance of the bonds and Form 8038-G/8038 (with evidence of filing).
2. Records of investments of bond proceeds prior to expenditure or held in reserve funds, including evidence that all investments were purchased at fair market value (as discussed below).
3. Records of expenditure of bond proceeds and allocation of bond proceeds to project expenditures (described in VI below).
4. If applicable, records relating to private business use of bond-financed facilities, e.g., leases and other use agreements, management contracts, etc. (see VII below describing various forms of private business use), and records reflecting any revenues derived by the issuer with respect to the private business use of bond-financed facilities.
5. All records of any post-issuance credit enhancement and hedging (e.g., swap) transactions relating to the bonds.
6. Any amendments of bond documents.
7. All rebate calculations and analyses.
8. All written procedures adopted to ensure compliance with tax requirements, including these record retention procedures.

C. **Period of retention**. These records should be retained for the term of the bond issue and the term of any tax-exempt bonds issued to refund (or re-refund) the original bonds, plus 3 years after final redemption or maturity of those bonds.

D. **Part of the written procedures**. These record retention procedures should be a part of the written procedures described in II above.

IV. COMPLY WITH FAIR MARKET VALUE INVESTMENT REQUIREMENTS

A. **Fair market value/market yield requirement**. Most tax-exempt bond proceeds are subject to arbitrage restrictions – yield restriction and/or rebate requirements. To enforce these requirements, bond proceeds must be invested at a market rate and investments must be purchased at fair market value. If audited by the IRS, a bond issuer has the burden of proving that the investments purchased with bond proceeds have a fair market yield. *If the issuer is not able to satisfy this burden, the IRS may claim that the fair market yield of the investments is higher than the stated yield of the investments, which can result in "phantom" yield to the issuer that results in a higher rebate liability with no additional earnings to pay that liability. Thus, when purchasing investments, an issuer should take into consideration the following rules so that it is able to prove that the investments have a fair market yield.*

B. **Treasury obligations purchased from the U.S. Treasury**.

1. Treasury obligations that are purchased directly from the U.S. Treasury are always treated as purchased at fair market value.
2. State and Local Government Series. One type of Treasury obligations that are purchased directly from the U.S. Treasury are obligations of the State and Local Government Series (SLGS). SLGS are a special series of Treasury obligations designed for investment of tax-exempt bond proceeds. A bond issuer sets the maturity date for SLGS and the interest rate for each maturity of SLGS up to a maximum rate announced daily by the Bureau of Public Debt. SLGS are most often used to fund yield-restricted advance refunding escrows immediately upon issuance of advance refunding bonds but SLGS can also be purchased long after bonds are issued in order to satisfy a yield-restriction requirement.

C. **Publicly traded securities (e.g., Treasury obligations) purchased in the secondary market**.

1. A bond issuer that purchases publicly traded securities for immediate delivery can generally prove that the securities were purchased at fair market value based on public trading information.
2. Where the securities are purchased with a delayed delivery date, public trading information generally is not available to support the price as being fair market value because public trading prices generally involve immediate delivery. In order to prove fair market value for a delayed delivery purchase, it is generally necessary to request and receive at least three bids for the securities involving the same delivery terms. The Treasury regulations set forth detailed rules for this bidding requirement that, if satisfied, provide a "safe harbor" that ensures that the securities will be treated for tax purposes as purchased at fair market value.

D. **Guaranteed investment contracts (GICs)**. GICs are individually designed investment contracts that have specified withdrawal and other terms. Because the terms of GICs vary and there is no public trading market for GICs, it is not possible to look to market rates or prices in establishing the fair market yield for GICs. As a result, like public securities purchased for delayed delivery, the Treasury regulations provide a set of bidding requirements that, if satisfied, provide a "safe harbor" that ensures the yield on a GIC will be treated as a fair market yield.

E. **Certificates of deposit (CDs)**. CDs are generally treated as having a fair market yield if the yield on the CD is *not* less than --

1. The yield on reasonably comparable Treasury obligations; and
2. The highest yield that is published by the provider of the CD to be currently available from the provider on reasonably comparable CDs offered to the public.

V. MONITOR TIMING OF EXPENDITURES TO MAXIMIZE LIKELIHOOD OF MEETING A REBATE EXCEPTION

A. **Rebate requirement**. An issuer of tax-exempt bonds is generally required to pay (i.e., "rebate") to the U.S. Treasury all investment earnings on bond proceeds to the extent that the yield earned on the investments exceeded the yield on the bond issue (known as the "rebate requirement"). *Even in the current economic climate in which few issuers are able to earn "positive arbitrage" on their invested bond proceeds, this requirement imposes significant administrative burdens and cost (e.g., paying a rebate consultant) on issuers and is a requirement to be avoided if possible.*

B. **Spending exceptions from rebate requirement**. Several exceptions to the burdensome rebate requirement are available based on the nature of the expenditures being financed by the bonds and provided the bond proceeds are spent within specified time periods. These exceptions, referred to as the "spending exceptions" from the rebate requirement, apply as follows (these descriptions of the spending exceptions are very general; bond counsel should be contacted for a detailed explanation):

1. Two-year spending exception.

a. This exception is generally available for governmental use bonds, qualified 501(c)(3) bonds, and certain other tax-exempt private activity bonds. The exception requires that at least 75 percent of the bond proceeds be used to pay construction expenditures (or that a "bifurcation election" be made to treat the construction portion of the issue as a separate issue for this purpose).

b. The 2-year exception generally applies where *each of* the following percentages of proceeds is spent within the following time periods (other than any proceeds held in a reserve fund, which continue to be subject to the rebate requirement):

Time period from issuance date:	Percentage of proceeds that must be spent:
6 months	10%
1 year	45%
18 months	75%
2 years	100%

2. 18-month spending exception.

a. Most "new money" (rather than refunding) issues that are not eligible for the two-year spending exception because, for example, they finance an acquisition rather than construction project are eligible for the 18-month spending exception from the rebate requirement.

b. The 18-month spending exception generally applies where *each of* the following percentages of proceeds is spent within the following time periods (other than any proceeds held in a reserve fund, which continue to be subject to the rebate requirement):

Time period from issuance date:	Percentage of proceeds that must be spent:
6 months	15%
1 year	60%
18 months	100%

3. Six-month spending exception.

a. Any issuer is generally exempt from the rebate requirement if all of the proceeds of the issue are spent within six months after issuance. Because the 2-year and/or 18-month spending exceptions are available for most new money issues, the primary application of the 6-month spending exception is for current refundings, which are not eligible for either the 2-year or 18-month spending exceptions.

b. In a current refunding, the refunded bonds must be retired with proceeds of the refunding bonds within 90 days after issuance of the refunding bonds. Accordingly, the 6-month spending exception should almost always be satisfied in the case of a current refunding. *Note, however, that proceeds set aside to pay issuance costs are sometimes not spent on a timely basis and can cause the refunding issue to fail to qualify for this exception from the rebate requirement.*

C. **Monitor spending compliance**. The issuer should identify which of these spending exceptions may apply to a bond issue and should then frequently monitor the rate of spending of proceeds to ensure that, where possible, a spending exception is satisfied. Of course, proceeds should not be spent prior to the time that customary prudence and applicable state law would permit their expenditure. Further, federal tax law does not permit the "prepayment" of expenditures for the purpose of satisfying a rebate spending exception. *However, often times there is some degree of flexibility in the timing of expenditures, and it could be very costly to miss a spending requirement merely by a few days or weeks.*

VI. CONSIDER MAKING A "FINAL ALLOCATION" OF PROCEEDS

A. **Direct tracing**. Bond proceeds are generally treated as financing (i.e., are allocated to) the project costs for which they are actually spent. This is referred to as the "direct tracing" method of allocating proceeds.

B. **Direct tracing may not be desirable**. This may not result in the most desirable allocation of bond proceeds. For example, assume that 80% of the cost of a governmental office building is being financed with bond proceeds and the remaining 20% is being paid with tax revenues. Assume further that 20% of the building will be leased to private business. If the bond proceeds and tax revenues are commingled and spent to pay construction costs, all portions of the building will generally be treated as funded 80% with bond proceeds and 20% with tax revenues. This would be an undesirable allocation for tax purposes because the private business use limit of the bond issue would be exceeded.

C. **Permitted allocations**. The tax law provides a very useful method of avoiding the above result. An issuer is permitted to allocate the proceeds of a bond issue to particular portions of a project (or to particular expenditures) with the objective of minimizing current or

future private business use. In the above example, the issuer could allocate all of the bond proceeds to the portions of the building that will be used for governmental, rather than private, uses.

D. **Final allocation**. The issuer can allocate proceeds of a bond issue by executing a certificate in which it allocates bond proceeds to particular portions of a project or to particular expenditures. The tax law is very generous in the required timing of this allocation – the allocation can be made by the issuer at any time prior to 18 months after the later of the expenditure date or the placed-in-service date of the project. *As this deadline for proceeds allocation approaches, the issuer should consider whether it can gain an advantage by making such an allocation of proceeds rather than merely relying on the direct tracing/pro rata approach that otherwise applies.*

E. **Document allocation**. *Regardless of whether the issuer makes an allocation of bond proceeds as described in D, the issuer should maintain a careful record of the facilities and assets to which bond proceeds are allocated so that it can monitor compliance with the private business use requirements described below.*

VII. PERIODICALLY REVIEW PRIVATE BUSINESS USE

A. **Private business use limit**. The amount of use by private (non-governmental) persons of facilities financed by tax-exempt bonds (i.e., private business use) is generally limited to 5% or 10% of the facilities financed by a governmental use bond issue (5% in the case of qualified 501(c)(3) bond issues). This limitation continues throughout the entire period that any portion of the bond issue is outstanding.

B. **Private business use** can take many forms, including the following:

1. Private ownership of bond-financed facilities (non-governmental/non-501(c)(3) ownership is prohibited to any extent in the case of qualified 501(c)(3) bonds).
2. Leases of bond-financed facilities to private persons.
3. Certain management contracts relating to bond-financed facilities (discussed in VIII, below).
4. Certain sponsored research agreements.
5. Certain contracts relating to the output of bond-financed facilities (e.g., electric or other utilities).
6. Other contracts providing private persons with "special legal entitlements" for the use of bond-financed facilities that are comparable to the special legal entitlements described in 1 through 5 above.

C. **10% vs. 5% limit**. The private business use limit of 10% is applied to all private business use. The 5% private business use limit applies only to:

1. Private business use of a facility that is unrelated to governmental use of that facility, or
2. To the extent that a private business use of the facility exceeds the amount of related governmental use of that facility.

Private business use is aggregated and the applicable 10% or 5% limit is applied to the repective total amount of private business use subject to each limit.

D. **Averaging of private business use**. The private business use limit is generally applied over the term of the bond issue by averaging the percentage of private business use in each year while any of the bonds of the issue are outstanding. This means that private business use can exceed the limit in some years, provided that private business use is sufficiently below the limit in other years.

E. **Documenting private business use**. *Particularly because of this averaging of annual private business use percentages, an issuer of tax-exempt bonds should adopt procedures for monitoring the amount of private business use of all facilities financed with each issue of tax-exempt bonds and maintaining a careful record of all private business use*.

VIII. REVIEW MANAGEMENT OR SERVICE CONTRACTS FOR TAX COMPLIANCE PRIOR TO EXECUTION OR AMENDING

A. **Nature of contracts**. Certain management or service contract relating to a bond-financed facility can result in the manager or service provider being treated as a private business user of the facility. Such contracts are generally any management, service, or incentive payment contract between a tax-exempt bond issuer (or a 501(c)(3) borrower of bond proceeds) and a service provider under which the service provider provides services involving all, a portion of, or any function of, a bond-financed facility. Examples of these contracts are a contract to manage a governmental parking garage or a contract to provide food service in a public or 501(c)(3) hospital.

B. **Exception from private business use**. However, if the contract satisfies the requirements of Revenue Procedure 97-13, the contract will not result in private business use. *It is important, where possible, to structure a management contract within the requirements of Rev. Proc. 97-13. If this cannot be done, the issuer should assume that the contract will result in private business use.*

C. **Requirements of Rev. Proc. 97-13**. A discussion of the detailed requirements of Rev. Proc. 97-13 is beyond the scope of this outline. It can be stated generally, however, that care and attention is required to cause a management or service contract to satisfy these requirements; it is very unusual for such a contract to satisfy these requirements unless these requirements are kept carefully in mind while negotiating the contract. *Bond counsel should be contacted before entering into or amending any management or service contract with respect to a bond-financed facility.*

IX. SATISFY REBATE REQUIREMENTS

A. **Rebate requirement and exceptions**. If an issue of tax-exempt bonds does not qualify for any exception from the rebate requirement, the issuer must pay to the U.S. Treasury all investment earnings on bond proceeds to the extent that the yield of investments exceeds the yield of the bond issue. The following are the exceptions to the rebate requirement:

1. The “spending exceptions,” as described generally in V above.

2. The "small issuer exception," which is generally applicable to governmental use obligations issued by certain issuers that did not issue more than $5 million of new money and advance refunding governmental use bonds during the year in which the governmental obligations under consideration were issued. The $5 million limit is generally increased to $15 million in the case of issuers financing public school facilities.

B. **Due dates of rebate payments**. Rebate payments are generally due:

1. Every five years while tax-exempt bonds are outstanding, and
2. Upon maturity or redemption of an issue of tax-exempt bonds.

C. **Failure to rebate**. Like most tax requirements, the consequence of failing to make required rebate payments could be taxability of the bonds. *Upon issuance of the bonds, an issuer should determine how it will comply with the rebate requirement – generally by hiring a rebate consultant to analyze and calculate the issuer's rebate liability*.

X. CONSIDER REMEDIAL ACTION OR THE VOLUNTARY CLOSING AGREEMENT PROGRAM, IF NECESSARY

A. **Curing a violation**. If a bond issuer violates the tax rules thereby jeopardizing the tax-exempt status of its bonds, "remedial action" or the IRS's "Voluntary Closing Agreement Program" may be available to cure the violation.

B. **Remedial action**.

1. Remedial action is generally available to cure excess private business use or private loan, provided the action is taken within a specified period after the excess occurred.
2. These remedial actions generally involve one of the following actions by the issuer:

a. Redemption or defeasance of the "nonqualified" bonds (i.e., the portion of the bonds allocable to the excess private business use or private loan).

b. Where excess private business use results from a cash sale of a bond-financed facility to a private person, an available remedial action is expenditure of the disposition proceeds (i.e., proceeds from the sale of the facility) for capital projects eligible for tax-exempt financing.

c. In rare cases, generally involving excess private business use of facilities financed with governmental use bonds by a 501(c)(3) organization, the bonds can effectively be converted to tax-exempt 501(c)(3) bonds.

C. **Voluntary Closing Agreement Program (VCAP)**.

1. Where a closing agreement is not available, for example, in the case of a private activity bond violation that is discovered long after the violation occurred, an issuer can apply to the IRS to enter into a "closing agreement" in which the IRS agrees not to declare the interest on the bonds taxable in exchange for a payment by the issuer.

2. Negotiations for a closing agreement can be done on an anonymous basis by counsel to the issuer (i.e., without identifying the identity of the issuer or the bonds in question) to ensure that a reasonable settlement/closing agreement payment will be reached before the issuer is effectively committed to entering into the closing agreement.
3. While a closing agreement is generally less desirable than remedial action because a closing agreement almost always requires a payment to the IRS, a closing agreement is preferable to the violation being discovered upon audit because the required payment in that event will generally be significantly higher than the payment required for a closing agreement.

IN CONCLUSION, ASSUME THE BONDS WILL BE AUDITED

Finally, in applying all of the tax requirements applicable to an issue of bonds, especially those described above, the issuer should assume that the bonds will be audited by the IRS. In fact, only a small percentage of bond issues are actually audited by the IRS. However, the results of an audit can be very expensive where the tax requirements have not been satisfied. The IRS will generally expect to collect the "taxpayer exposure" from a bond issue that has not satisfied the tax requirements. This is generally an amount equal to a typical federal income tax rate multiplied by all interest payments for the most recent three or four years (i.e., years for which the "statute of limitations" has not run). In addition, the IRS will likely require the issuer also to pay future taxpayer exposure and to redeem the bonds as early as possible. To avoid this potentially devastating result, it is best to assume – that is to comply with all tax requirements – as though an IRS audit were certain to occur.

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Ms. Magee is actively involved in various organizations in the community. In 2004, she received an Equal Justice Award from Jacksonville Area Legal Aid for her commitment to providing pro bono service to its custody mill program, and in 2006, was a recipient of the Lynford Lardner award, a top firm honor for community service. Ms. Magee has also been named "40 Under 40" by the *Jacksonville Business Journal*.

Ms. Magee is an honors graduate of the University of Georgia School of Law (J.D., *magna cum laude, 2000*), where she was a notes editor for the *Georgia Journal of International and Comparative Law* and inducted into the Order of the Coif. Ms. Magee received her undergraduate degree in communications from Florida State University and was inducted into Phi Beta Kappa Honor Society.

Ms. Magee is a member of the National Association of Bond Lawyers. Ms. Magee has been admitted to The Florida Bar and The North Carolina State Bar.

On June 10, 2009 the Advisory Committee on Tax Exempt and Government Entities (the ACT) released its report on "Record Retention Requirements for Tax-Exempt Bonds and Tax Credit Bonds: A Specific Proposal for Published Guidance." The following are excerpts from the 2009 Report, which consist of an overview discussion and a recommended revenue procedure. The complete 2009 Report contains an extensive discussion of issues and analysis. A complete copy of the 2009 Report is posted on the IRS website at http://www.irs.gov/pub/irs-tege/tege_act_rpt8.pdf .

ADVISORY COMMITTEE ON

TAX EXEMPT AND GOVERNMENT ENTITIES

(ACT)

RECORD RETENTION REQUIREMENTS FOR TAX-EXEMPT BONDS AND TAX CREDIT BONDS: A SPECIFIC PROPOSAL FOR PUBLISHED GUIDANCE

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Joan M. Di Marco, Project Leader

John Pasicznyk, Project Leader

June 10, 2009

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EXECUTIVE SUMMARY

This project makes a specific proposal for published guidance addressing the record retention requirements for tax-exempt bonds and tax credit bonds. The project recommends publication of a revenue procedure that establishes safe harbors for certain record retention practices. The report makes a specific recommendation for bonds and tax credit bonds that are issued for the benefit of state and local governments and 501(c)(3) organizations (that is "governmental" bonds that are not private activity bonds under section 141 of the Code, qualified 501(c)(3) bonds issued under section 145 of the Code, and tax credit bonds that have similar qualification requirements, including Build America Bonds issued under section 54AA of the Code). The project contemplates, however, that the same approach should be extended to different types of tax-exempt bonds and tax credit bonds, using the basic framework set forth, but adding additional modules to set forth the specific additional qualification requirements for different types of tax-exempt bonds and tax credit bonds.

The administrative burden of record retention relating to tax-exempt bonds and tax credit bonds is unusually great for a number of reasons. First, many of the qualification requirements for tax-exempt bonds and tax credit bonds apply for the entire term of a bond issue. Because tax-exempt bond and tax credit bond issues commonly have a term of 30 years or more, and are commonly refinanced for even longer terms, an issuer may be required to maintain records to demonstrate tax compliance over a very long period. In addition, a number of detailed and complex qualification rules apply, so that multiple different types of records are necessary to demonstrate compliance.

The special record retention problems in this area have been discussed in prior ACT reports, in public comments in response to Notice 2006-63, and in numerous other less formal stakeholder communications with the Service. Specific approaches to provide record retention guidance and relief have proved to be difficult to develop.

The project recommends that the key to developing practical safe harbor guidance is to link safe harbor record retention relief to the adoption and implementation of reasonable post-issuance tax compliance procedures. Accordingly, the project sets forth both a proposal for specific types of record retention safe harbors and a description of the core elements of post-issuance compliance procedures and practices that are required to qualify for those safe harbors.

The project does not recommend that the published guidance define the substantive standards that may apply to issuers of tax-exempt bonds and tax credit bonds under section 6001 of the Code. Regardless of the technical application of section 6001, it has become increasingly commonplace for issuers of tax-exempt bonds and tax credit bonds to enter into contractual covenants to maintain records

necessary to demonstrate tax compliance. In addition, application of the substantive standards may be different for different types of bonds and records and presents difficult interpretive issues, and likely could require a much longer period to develop. The development of record retention safe harbors can instead be more quickly developed to meet the immediate practical need for guidance.

METHODOLOGY

The team approached this project by first considering the recommendations of prior ACT reports relating to record retention as a whole, reviewing public comments in response to Notice 2006-63, and reviewing the status of the Tax Exempt Bond program in developing responses to those reports and public comments. The team conducted several interviews with officials of TEB to discuss concerns and issues regarding record retention that have arisen in the context of administration of the requirements for tax-exempt bonds, including in examinations, compliance checks, and voluntary closing agreements.

After the development of proposed specific recommendations, the team then sought informal input from a variety of affected stakeholders, including certain members and staff of the Government Finance Officers Association, the National Association of Higher Educational Facilities Authorities, the National Council of Health Facilities Finance Authorities, the National Association of Bond Lawyers, and the Section of Taxation of the American Bar Association. The final project reflects certain input made by these stakeholders.

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DISCUSSION

Prior ACT Reports on the Record Retention Burden for Tax-Exempt Bonds

Prior ACT reports have discussed in some detail the record retention burden faced by issuers of tax-exempt bonds, in particular the 2005 and 2008 ACT reports.

The 2005 ACT Report entitled "Tax Exempt Bonds: Record Retention Burden" emphasized that practical guidance is needed on record retention requirements for tax-exempt bonds, particularly because, in many instances, maintenance of records relevant to tax-exempt bond compliance may be required for periods in excess of 30 years. The 2005 ACT Report made the following specific recommendations:

- The Service should develop a revenue procedure providing guidance on the types of records that issuers of tax-exempt bonds should retain and the related time period for retention of those records.
- The Service should establish a special exception for governmental and qualified 501(c)(3) bond issuers that will ease the burden of recordkeeping for the arbitrage rebate requirements.
- The Service should evaluate the merits of a 2002 proposal on voluntary certification of bond-related records that will allow destruction of certain records prior the general requirements of the Code and regulations.
- The Service should consider establishing a Recordkeeping Agreement Pilot Program similar to the one established by Notice 2004-11 related to the research credit. A similar program could be established for use with complex areas of bond compliance, such as those associated with private use.

The 2008 ACT Report entitled "After the Bonds are Issued: Then What?" emphasized the need for adoption and implementation of post-issuance bond compliance practices and procedures. The 2008 Act Report specifically discussed the importance of record retention as an element of post-issuance compliance practices and procedures.

This report builds on the many of the recommendations of those prior ACT reports.

Actions Taken by the Service relating to Record Retention for Tax-Exempt Bonds

The Service has not published any comprehensive guidance addressing the application of record retention requirements to tax-exempt bonds or tax credit bonds. The applicable regulations do contain scattered record retention

requirements for a number of specific provisions. Most of these record retention provisions refer to the requirement to maintain certain elections or allocations in the books and records of an issue. The most detailed record retention provision for tax-exempt bonds set forth in regulations concerns the safe harbor to establish whether guaranteed investment contracts and investments for yield restriction defeasance escrows are acquired at fair market value. See Treas. Reg. §1.148-5(d)(6)(iii).

In 2003, the Service posted on the webpage for its Tax Exempt Bond program "Tax Exempt FAQs regarding Record Retention Requirements" (the "FAQs"). The FAQs have been modified over time but remain posted on the Tax Exempt Bond webpage. The FAQs note that, during the course of an examination, the Service's Tax Exempt Bond agents will request all material records and information to support an issue's compliance with section 103 of the Code. The FAQs set forth a detailed discussion of the records that agents may request, but also indicates that the FAQs are not to be cited as an authoritative source on record retention requirements.

The FAQs state that the requirements of section 6001 of the Code and Treas. Reg. §1.6001-1(a) apply to issuers, conduit borrowers, and bondholders and may apply to other parties to a tax-exempt bond transaction. The FAQs indicate that material records should generally be retained for as long as bonds of an issue are outstanding, plus three years after the final redemption date of the bonds.

Although the FAQs are not formal published guidance, the posting of the FAQs prompted significant reaction among state and local government issuers and bond counsel. In particular, it appears that the posting of the FAQs has resulted in a prevailing practice of including more specific record retention covenants in tax-exempt bond documents.

In Notice 2006-63, the Service requested public comments for developing record retention standards, including recordkeeping limitations programs, for tax-exempt bond issues. The Service in particular asked for public comments on managing any burdens potentially associated with the record retention requirements that apply to issuers and other parties in tax-exempt bond transactions.

In response to Notice 2006-63, the Service received 11 public comments. Most of the comments relate to the special record retention considerations of issuers of bonds for single family and multi-family housing. Public comments addressing the application of record retention requirements to governmental bonds and qualified 501(c)(3) bonds were submitted by the National Association of Bond Lawyers (the "NABL Public Comments") and the National Association of Higher Educational Facilities Authorities and the National Council of Health Facilities Finance Authorities (the "NAHEFA/NCHFFA Public Comments").

This report takes into account the public comments made in response to Notice 2006-63.

Tax Compliance Checklists Submitted by the National Association of Bond Lawyers and the Government Finance Officers Association

In light of the Service's increased emphasis of the need for post-issuance compliance relating to tax-exempt bond eligibility requirements, the National Association of Bond Lawyers and the Government Finance Officers Association jointly submitted to the Service and the Treasury form Tax Compliance Checklists (the "NABL/GFOA Checklists"), most recently by a letter dated August 16, 2007. The ACT believes that the NABL/GFOA Checklists represent an important step in the development of industry guidelines for tax-exempt bond compliance, although the NABL/GFOA Checklists do not necessarily correspond in every detailed respect with the recommendations set forth in this report.

The ACT recommends that a guidance project relating to record retention should consider the NABL/GFOA Checklists as a possible model approach for reasonable post-issuance compliance procedures.

IRS Tax-Exempt Bond Compliance Check Questionnaires

In a number of administrative actions since the release of Notice 2006-63, the Service further indicated a view that record retention and other aspects of post-issuance compliance are strongly interrelated.

In 2007, the Service initiated a soft-contact compliance check program to evaluate the post-issuance compliance and record retention practices within the tax-exempt bond industry. In 2007, the Service sent its "Tax-Exempt Bond Financings Compliance Check Questionnaire" (Form 13907) to 207 section 501(c)(3) organizations that are borrowers of tax-exempt bond proceeds. In 2009, the Service sent its "Governmental Bond Financings Compliance Check Questionnaire" (Form 14002) to approximately 200 state and local government issuers of tax-exempt bonds.

Both compliance check questionnaires begin with a Part I that asks questions related to general post-issuance compliance, focusing in particular on whether the issuer or borrower has written procedures to ensure compliance and whether the issuer or borrower has assigned responsibility for identified compliance tasks to specific officials, departments, or functions. The majority of the remainder of each questionnaire asks questions relating to recordkeeping, which include general recordkeeping practices (Part II) and recordkeeping practices relating to investments and arbitrage compliance (Part III), expenditures and assets (Part IV), and private business use.

On September 11, 2008, the Service released its "Interim Report on Charitable Financings: A Summary of Reported Data & Analysis" on its Tax-Exempt Bonds Compliance Check Initiative for charitable financings. This 2008 interim report discusses in detail the responses to the charitable financings compliance check questionnaire and also contains a significant discussion of the Service's views

relating to post-issuance compliance and record retention relating to tax-exempt bonds. Notably, the 2008 interim report emphasizes that the Service "encourages issuers and beneficiaries of tax-exempt bonds to implement procedures that will adequately enable them to safeguard against post-issuance violations that result in loss of the tax-exempt status of their bonds." The 2008 interim report also specifically references recommendations in the 2005 ACT Report and 2007 ACT Report relating to post-issuance compliance and record retention.

The ACT recommends that a guidance project relating to tax-exempt bond record retention should take into account responses and reactions to these compliance check questionnaires.

New Tax-Exempt Bond Reporting Requirements in Form 990

Substantial new reporting requirements in the redesigned Form 990 even more strongly indicate that the Service has an expectation that 501(c)(3) organization borrowers of tax-exempt bond proceeds will adopt record retention and post-issuance compliance procedures. The new reporting requirements are primarily set forth in the new Form 990 Schedule K. Schedule K requirements identification of bond issues benefiting the organization (Part I), detailed information recording how proceeds are spent (Part II), detailed information regarding private business use of bond-financed property (Part III), and certain information regarding arbitrage compliance (Part IV). Perhaps most notably, Schedule K asks whether the organization has "adopted management practices and procedures to ensure the post-issuance compliance of its tax-exempt bond liabilities". Because Schedule K requires annual reporting, it implies that at least in the case of qualified 501(c)(3) bonds, the borrower has an obligation to monitor tax compliance on an annual basis.

Accordingly, any published guidance project relating to record retention for qualified 501(c)(3) bonds should take into account the new Form 990 reporting requirements and be sufficient for borrowers to meet those requirements. The ACT recommends, however, that the specific wording and approach of Schedule K should be reexamined in the context of such a publication project. For example, it might be appropriate for a revised Schedule K to reference the record retention safe harbors that are set forth in such published guidance.

Recent Increased Importance of Tax Credit Bonds

The American Recovery and Reinvestment Act has greatly increased the importance of tax credit bonds issued under sections 54, 54A and 54AA of the Code. In particular, for any bonds issued after February 17, 2009, through 2010, a state or local government may elect to issue its bonds for governmental purposes either as traditional tax-exempt bonds under section 103 of the Code or as Build America Bonds under section 54AA of the Code. In the case of bonds issued for new capital projects during that period, a state or local government may also elect to issue its bonds as Qualified Build America Bonds, which entitles the issuer to

receive tax subsidy payments equal to 35 percent of interest that is payable on the bonds.

The enactment of the new authorization for Qualified Build America Bonds in particular makes more urgent the need for record retention guidance, because this new type of bond establishes a new administrative relationship of state and local governments to the Service and this relationship raises new and difficult record retention issues. The procedures established for filing for credit payments for Build America Bonds under initial published guidance also imply that the need for record retention guidance is urgent. For example, the initial procedures require an issuer of fixed rate bonds to file a Form 8038-CP with the Service not less than 45 days and not more than 90 days before each interest payment date. This requirement of periodic filing throughout the term of a bond issue further highlights the need for clear safe harbor guidance on record retention and post-issuance compliance procedures, particularly because issuers may have concerns about the level of compliance review that is appropriate to make such periodic filings.

Other types of new tax credit bonds which are authorized to be issued for governmental purposes include Recovery Zone Economic Development Bonds.

The qualification requirements for the new types of tax credit bonds for governmental purposes are in general similar to the requirements for traditional tax-exempt bonds, with certain additional requirements. In particular, Build America Bonds must in general meet all of the eligibility requirements for traditional tax-exempt bonds.

Because of the new importance of tax credit bonds, this report makes recommendations that apply both to traditional tax-exempt bonds and to the new types of tax credit bonds that can be issued for governmental purposes, including in particular Build America Bonds.

Interpretive Issues under Section 6001 and Other Provisions of the Code

Prior ACT reports and public comments in response to Notice 2006-63 generally recommend that the Service publish practical safe harbor guidance on record retention requirements for tax-exempt bonds. This report continues to recommend publication of safe harbor guidance rather than substantive interpretation of how the record retention requirements of the Code apply to tax-exempt bond issuers and borrowers.

The technical interpretation of how record retention requirements may apply in this context likely would require the resolution of a number of difficult interpretive issues that do not need to be definitively resolved to provide helpful guidance. The technical application of record retention requirements may be different for the following types of stakeholders: (1) state and local governments as issuers of tax-exempt bonds; (2) state and local governments as issuers of Qualified Build

America Bonds; (3) conduit borrowers of tax-exempt bonds; and (4) holders of tax-exempt bonds.

In the case of state or local government issuers of tax-exempt bonds, it is uncertain whether the record retention requirements of section 6001 of the Code apply at all, because state and local governments are not liable for income tax. Arguably, the requirement to file the Form 8038 information returns for tax-exempt bonds may result in certain record retention requirements. Even if so, however, the records relevant to those returns only concerns a limited set of the requirements for a bond issue to qualify as tax-exempt. For example, the Form 8038-G concerns only date of issuance information and the Form 8038-T only concerns information relating to "rebate" of certain investment profits when required to be made. In other words, a focus on any record retention requirements derived from information returns is not likely to be helpful in providing an overall framework for bond compliance record retention.

In the case of issuers of Qualified Build America Bonds, a state or local government issuer is placed in an administrative relationship to the Service that is the same as, or very similar to, a taxpayer, because the issuer will receive payments that are treated as tax refunds. A technical interpretation of all of the new record retention implications this new relationship could be difficult.

Conduit borrowers of tax-exempt bonds may be treated as taxpayers subject to income tax relating to tax-exempt bond compliance only in the case of qualified private activity bonds (such as bonds issued for the benefit of 501(c)(3) organizations) that are subject to the "change-of-use penalties" set forth in section 150(b) of the Code. In the case of qualified 501(c)(3) bonds, if an issue is non-compliant with use-of-proceeds restrictions, section 150(b) imputes unrelated business income and denies an interest deduction to the conduit borrower. Because section 150(b) concerns only requirements relating to use of bond-financed property, focus on the possible income tax liability of conduit borrowers is not likely to be helpful in providing an overall framework for bond compliance record retention.

In the case of bondholders (unlike issuers and conduit borrowers), all of the applicable eligibility requirements are material, because in general a bondholder is subject to additional income tax if the bond is noncompliant for any reason. Bondholders, however, rarely have direct control of, or even ready access to, the records necessary to establish compliance.

In addition, a meaningful and complete interpretation of substantive record retention requirements would need to address issues relating to burden of proof, particularly in light of the burden-shifting provisions of section 7491 of the Code. Such guidance would need to address how burden of proof standards may apply differently to different participants in a bond transaction. For example, the burden of proof standards that apply to a bondholder that purchases a bond in good faith

reliance on covenants and representations of an issuer may not necessarily be the same as an issuer that is directly responsible for tax compliance.

The Need for a Practical Safe Harbor Approach

As a practical matter, most issuers are expressly or implicitly contractually obligated to maintain records to establish bond compliance, regardless of the manner in which section 6001 and other record retention provisions of the Code may apply to them. It is commonplace for issuers to broadly covenant in bond documents for the benefit of bondholders not to take any action that would cause the bonds to fail to qualify under the applicable eligibility requirements for tax-exempt bonds or tax credit bonds. In addition, particularly after the posting of the FAQs by the Service in 2003, it has become commonplace for many bond documents to include express record retention covenants. Prompt guidance setting forth reasonable record retention safe harbor guidance is needed to inform issuers on ways to comply with such contractual covenants, even if for no other reason.

The thesis of this report is that the best and most practical approach is to establish flexible record retention safe harbors that are conditioned on the adoption and implementation of reasonable bond compliance procedures. This approach recognizes that record retention is best viewed in the context of overall tax compliance. The ACT believes that this approach can address the administrative goals of the Service to ensure and encourage tax compliance, while at the same time permitting more record retention relief for issuers.

This approach requires both the description of “reasonable bond compliance procedures” and the description of specific record retention safe harbors. The ACT believes that this framework approach could be implemented in a number of different ways. In order to further advance the dialogue with a goal towards moving forward to published guidance, this report sets forth an issues memorandum and draft revenue procedure making a specific proposal for how this framework approach could be implemented.

Description of the Proposed Revenue Procedure

The proposed revenue procedure identifies the core elements of reasonable bond compliance procedures that must be adopted and implemented to qualify for favorable record retention safe harbors. These core elements are identified as (1) reasonable procedures for assignment of compliance responsibilities; (2) reasonable procedures for the establishment and maintenance of books and records; (3) reasonable procedures for compliant investment of gross proceeds; (4) reasonable procedures for the review and allocation of bond proceeds; (5) reasonable procedures for periodic monitoring of use of financed property; and (6) reasonable susceptibility to audit. The proposed revenue procedure acknowledges by specific examples and otherwise that, in light of the great variety of bond issuers and borrowers, a “one size fits all” approach is not workable, and that issuers should have considerable flexibility to meet these core elements.

The proposed revenue procedure then sets forth specific record retention safe harbors for the following types of records: (1) investment requirements; (2) expenditure requirements; and (3) qualified use of bond proceeds and bond-financed property.

A general theme of the record retention safe harbors is that detailed records are required to be maintained only for a minimum period of six years (but not longer than three years after the bonds are retired), provided that summary records are maintained for a general record retention period.

Additional Public Comment

The approach set forth in the proposed guidance project is in certain respects novel and publication of a guidance project using this approach can be expected to have significant impact on the procedures of state and local governments. In that light, although the ACT recommends that the guidance project be set forth in a revenue procedure, the ACT also recommends that the Service and Treasury consider publication of a proposed revenue procedure subject to further public comment.

Recommendations for Regulatory Revisions to Provide Additional Record Retention Relief

The ACT believes that publication of safe harbor guidance on record retention for tax-exempt bonds and tax credit bonds should also be an occasion for the Service and Treasury to consider revisions to regulations to provide additional relief from record retention burden.

Certain provisions of the existing regulations were expressly adopted in order to reduce administrative burden on issuers. The final private activity bond regulations published on January 16, 1997, for the first time set forth an express rule that compliance with the private activity bond requirements for governmental bonds must take into account “deliberate actions” as well as date of issuance reasonable expectations. At the time of promulgation of these regulations, however, neither issuers nor the Service fully understood the large administrative burden imposed by the “deliberate action” rule. The ACT believes that the Service should revisit the scope of exceptions in light of administrative burdens relating to record retention and post-issuance compliance.

In recognition of this administrative burden, Treas. Reg. §1.141-2(d)(5) provides a special rule for general obligation bond programs that finance a large number of different purposes. Under that rule, an issuer can establish compliance with the private activity bond tests based solely on date of issuance reasonable expectations (without taking into account subsequent deliberate actions) provided that a number of conditions are met. The detailed requirements of this special rule, however, make the provision unavailable for many issuers. For example, one condition of the rule is that the issuer must reasonably expect to expend all net proceeds of the bond issue within 6 months of the date of issuance and must

reasonably expect to expend all net proceeds of the bond issuer before expending proceeds of similar general obligation bonds. The preamble to the final regulation adopting this special rule expressly indicates that it was adopted to minimize administrative burden on issuers:

> The proposed regulations provide a special exception to the definition of disposition proceeds that is intended to minimize the burden of tracing the use of proceeds of general obligation bonds that finance a large number of projects. Commentators suggested that this exception should be available for other types of bonds and that fewer conditions should apply to the exception.
>
> The final regulations provide a similar rule that is broadly stated as an exception to the rule that a deliberate action after the issue date can cause an issue to fail to meet the private activity bond tests. The exception is intended to provide relief for "cash flow" general obligation bond programs, where issuers use the proceeds of an issue for a large number of projects and spend proceeds promptly. These programs merit special treatment because they further the purposes of the arbitrage rules.

TD 8712, 62 F.R. 2276 (January 16, 1997).

Another example of a regulatory exception that is far too narrowly crafted is the special rule for dispositions of personal property in the ordinary course of business of an established governmental program set forth in Treas. Reg. §1.141-2(d)(4).

Examples of possible revisions to the regulations that could significantly reduce administrative burden include the following: (a) expansion of the special rule for general obligation bonds that finance a large number of separate purposes to make it more widely available to general obligation bond issues that finance capital projects; (b) consideration of other exceptions to the "deliberate action" rule that requires monitoring of use of bond-financed property after the date of issuance, including exceptions for small issuers, (c) expansion of the rule for dispositions of personal property in the ordinary course of an established governmental program so that it applies to qualified 501(c)(3) bonds; and (d) adoption of a regulatory de minimis rule to the requirement for qualified 501(c)(3) bonds that all property must be owned by a 501(c)(3) organization or a state or local government.

A Renewed Call for Simplification

Finally, the ACT recommends that a published guidance project dealing with record retention and post-issuance compliance should be accompanied by a renewed commitment to regulatory simplification to ease the compliance burden on issuers

and borrowers. To a certain extent, the complexity of the tax-exempt bond and tax credit bond requirements is inherent in the detailed provisions of the Code, but the complexity of implementing regulations and published guidance in many cases makes the compliance burden on issuers and borrowers unnecessarily burdensome.

A prime example is the rule for "yield reduction payments" set forth in the arbitrage regulations under section 148 of the Code. These regulations permit an issuer to make payments to the Treasury to reduce investment yield on investments, but only in certain cases which are specified in an unduly complex rule. In cases where yield reduction payments are not permitted, an issuer may be required to achieve compliance by means of complicated investment strategies or a costly voluntary closing agreement. There appears to be no compelling reason why yield reduction payments should not be permitted in all cases.

In 1992, the Service announced a major commitment to simplification of regulatory guidance under section 148 of the Code. See 57 FR 20971. That commitment was followed up with the publication of final regulations in 1993 that took significant steps towards simplification and that identified simplication as a primary objective. Since that time, the Service's emphasis on tax-exempt bond simplification has largely faded. Now is the occasion for a renewed litmus test for the reexamination and adoption of tax-exempt bond and tax credit bond regulations and other interpretive guidance: are the interpretive rules readily understandable by issuers and readily susceptible to implementation in reasonable post-issuance compliance procedures.

APPENDIX C

PROPOSED FORM OF REVENUE PROCEDURE

Rev. Proc. 2009-__

Records Establishing Compliance with Certain Requirements of Sections 103, 141 through 150, 54AA, 54F and 1400U-2

Section 1. Purpose

The purpose of this revenue procedure is to set forth conditions under which certain factual and other matters material to the requirements of §§ 103, 141 through 150, 54AA, 54(f) and 1400U-2 of the Internal Revenue Code of 1986 (the Code) will be considered by the Service to be established. This revenue procedure does not set forth substantive standards for recordkeeping requirements under § 6001. This revenue procedure is intended to provide administrative relief to issuers and conduit borrowers of tax-advantaged bonds. The failure of an issuer or conduit borrower to adopt the safe harbors set forth in this revenue procedure will not establish any presumption adverse to an issuer or conduit borrower in an examination.

Section 2. Background

.01 *Requirements for state and local obligations under §§103 and 141 through 150 of the Code*

(1) Under section 103(a) of the Code, gross income does not include interest on any State or local bond. Under § 103(b)(1), § 103(a) does not apply to a private activity bond, unless it is a qualified bond under § 141(e). Under § 141(e), a private activity bond is a qualified bond only if it meets the applicable requirements of §§ 142 through 147. Under § 103(b)(2), § 103 does not apply to any arbitrage bond within the meaning of § 148. Under § 103(b)(3). §103(a) does not apply to any bond unless such bond meets the requirements of § 149.

(2) Many of the requirements of §§ 103 and 141 through 150 apply to an issue on the date of issuance and after the date of issuance throughout the term of the issue. In most instances, failure to comply with such requirements results in interest on the obligations becoming includible in gross income from the date of issuance. In part because obligations issued under § 103 commonly may have maturities in excess of 30 years and may finance a large number of different projects, record retention requirements relating to such requirements may be unusually burdensome.

(3) The issuer (or conduit borrower) of obligations issued under § 103 may covenant to the holders of the obligations to meet the applicable requirements

under §§ 103 and 141 through 150, and will customarily have control of records relating to compliance.

.02 *Requirements for Build America Bonds under § 54AA of the Code*

(1) Under § 54AA(a) of the Code if a taxpayer holds a Build America Bonds on one or more interest payment dates during any taxable year, there shall be allowed as a credit against cinome tax for the taxable year an amount equal to the sum of the credits determined under § 54AA(b) with respect to such dates. The amount of the credit determined under § 54AA(b) with respect to any interest payment date for a Build America Bond is 35 percent of the interest payable by the issuer with respect to such date. Under § 54AA(d) of the Code, for purposes of § 54AA, the term "Build America Bond" generally means any obligation (other than a private activity bond) if the interest on such obligation would (but for § 54AA) be excludable from gross income under § 103, such obligation is issued before the date designated therein, and the issuer makes an irrevocable election to have § 54AA apply.

(2) Under § 6431, in the case of any Qualified Build America Bond issued under § 54AA(g) before January 1, 2011, the issuer shall be allowed a credit with respect to each interest payment under such bond in an amount equal to 35 percent of the interest payable under such bond. Under § 54AA(g), the term "Qualified Build America Bond" generally means any Build America Bond if 100 percent of the available project proceeds are to be used for capital expenditures and the issuer makes an irrevocable election to have § 54AA(g) apply.

.03 *Requirements for Economic Development Recovery Zone Bonds under § 1400U-2 of the Code.*

(1) Under § 1400U-2 of the Code, a Recovery Zone Economic Development Bond is treated as a Build America Bond and a Qualified Build America Bond, provided that a tax credit amount of 45 percent of interest payable applies rather than a 35 percent tax credit. The term "Recovery Zone Economic Development Bonds" generally means a bond 100 percent of the available project proceeds of which are used for the purposes of promoting development or other economic activity in a recovery zone.

.04 *Application of recordkeeping requirements*

(1) Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules as the Secretary may from time to time prescribe. Whenever necessary, the Secretary may require any person, by notice served upon that person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not that person is liable for tax.

(2) Section 1.6001-1(a) generally provides that persons subject to income tax, or required to file a return of information with respect to income, must keep such books or records as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return of such tax information.

(3) Section 1.6001-1(e) provides that the books or records required by § 6001 must be kept available at all times for inspection by authorized internal revenue officers or employees, and must be retained as the contents thereof may become material in the administration of any internal revenue law.

Section 3. Safe harbor bond compliance procedures

01. *Safe harbor bond compliance procedures* mean reasonable procedures adopted and implemented by an issuer that are intended to ensure compliance with the applicable requirements of §§ 103, 141 though 150, 54, 54A, and 54AA and that include at least all of the following elements—

(1) Reasonable procedures to assign compliance responsibilities to appropriate departments, employees, or other functions;

(2) Reasonable procedures for the establishment and maintenance of books and records files for each issue;

(3) Reasonable procedures for compliant investment of gross proceeds for each bond issue;

(4) Reasonable procedures for the review and allocation of expenditures of bond proceeds for each issue;

(5) Reasonable procedures for periodic monitoring of use of proceeds and financed property; and

(6) Susceptibility to audit to verify adherence to the procedures.

02. *Reasonable procedures for assignment of compliance responsibilities* mean procedures that identify and assign responsibility for each of the Bond Requirements that apply to each Category of Bond Issue. The specific manner in which the assignment is made may take into account the size and organizational structure of the issuer, the size and complexity of the issues of tax-exempt bonds and tax credit bonds that are issued by the issuer, the nature of the Bond Requirements that are applicable, and other relevant facts and circumstances that apply to the issuer and its obligations.

The following are examples of reasonable procedures for assignment of compliance responsibilities.

(1) *Example 1.* City A seeks to adopt and implement safe harbor bond compliance procedures for its general obligation bonds. Under the City A's charter, the chief financial officer generally has responsibility for financial matters, the city attorney has responsibility for legal interpretation, and the city treasurer has responsibility for investment of funds. City A adopts tax-exempt bond compliance policies that assign to these officers specific compliance tasks. For example, in general, the chief financial officer is assigned responsibility to review how bond proceeds are spent, to maintain records relating to expenditures, and to compute the amount of any private business use of bond proceeds. The city attorney is assigned responsibility to review any contractual arrangements for use of bond-financed property and to maintain records relating to any such arrangements. The treasurer is assigned responsibility to ensure that all investments purchased with tax-exempt bonds are purchased and sold at fair market value, that reports relating to the rebate requirement of § 148 are obtained on a timely basis, that any required rebate payments are made to the United States on a timely basis, and that records relating to such investments are retained. Such an approach, if implemented for each specific material requirement, may meet the requirement for reasonable procedures for assignment of compliance responsibilities.

(2) *Example 2.* Health Care Organization H is an organization described in § 501(c)(3) that owns and operates five hospitals. The general counsel of H also serves as the assistant treasurer. H seeks to adopt safe harbor bond compliance procedures for its hospital revenue bonds. H determines to appoint the general counsel/assistant treasurer as "bond compliance officer" and to assign all tax-exempt bond compliance responsibilities to the bond compliance officer, with the exception of record retention requirements relating to expenditures of bond proceeds, which are to be maintained at the hospital level. Such an approach, if implemented for each specific material requirement, may meet the requirement for reasonable procedures for assignment of compliance responsibilities.

03. *Reasonable procedures for the establishment and maintenance of books and records files* mean procedures that identify different categories of material records of each issue that may be created both on or before the date of issuance and throughout the term of the issue, that identify the location where each category of records will be retained and that identify the department, employees or function responsible for maintaining each category of material records. In most cases, procedures for the establishment of books and records files will not be reasonable if the books and records files consist only of records available as of the date of issuance (for example, only the bond transcript). Procedures for the maintenance of books and files are reasonable only if all elections required or permitted under the Code or Income Tax Regulations for an issue are maintained for the General Record Retention Period. An important factor in determining whether books and records files are reasonable is whether the files are designated in a manner that identifies and takes into account treatment of bonds as different issues for purposes of the Bond Requirements (which may be different than the identification of bonds as different issues for state law or bond document requirements.)

Example. City A seeks to adopt safe harbor compliance procedures for its general obligation bonds. City A adopts compliance procedures that identify the following files of books and records for each of its general obligation bond issues, that specify the location of each such file and that identify a department responsible for maintaining each file:

(1) The bond transcript.

(2) Requisitions to the bond trustee.

(3) Other information showing how the bond proceeds are spent, which may include invoices and checks or other verifiable information.

(4) Records showing actual payments of debt service on the issue.

(5) The bond proceeds expenditure certificate and other post-issuance tax allocations and elections, if any.

(6) Records of all investments of bond proceeds and any other "gross proceeds" of the bonds, including rebate reports and evidence of rebate payments.

(7) Records establishing the use of all property financed with proceeds of the bond issue, including service contracts and leases.

(8) Records, certifications, and opinions relating to any "change of use" of bond-financed property, including remedial action certificates and opinions.

(9) Records relating to extensions or replacements of guarantees of bonds of the issue, such as letters of credit, and records showing the dates and amounts of any payments for guarantees.

(10) Records relating to interest rate swaps or other derivatives relating to the bonds entered into after the date of issuance, if any, and records showing the dates and amounts of any payments and receipts with respect to each derivative contract.

(11) Records relating to any modifications of the bonds or the bond documents of the bond issue, including amendments to bond documents and interest rate mode conversions.

These different categories of records will be maintained at varying different locations by a number of different responsible officials or departments. City A has adopted reasonable procedures establishing books and records files for its general obligation bonds.

04. *Reasonable procedures for compliant investment of gross proceeds* means reasonable procedures that are intended to ensure that the investment of gross proceeds meets the arbitrage requirements of § 148 and the federal guarantee requirements of § 149(b) including at least the following elements –

(1) Procedures to ensure that all such investments are purchased and sold at fair market value in bona fide, arm's-length transactions;

(2) Procedures to ensure that all such investments that are guaranteed investment contracts or investments for a yield restricted defeasance escrow are purchased and sold pursuant to the "three-bid" safe harbor set forth in § 1.148-5(d)(6)(iii), unless application of that safe harbor is determined to be not reasonably practicable. For example, application of the safe harbor may be determined not to be reasonably practicable because of limited interest of potential providers of the investment;

(3) Procedures to ensure that bond proceeds are not intentionally held uninvested and are not actually held uninvested for a period of longer than 3 days;

(4) Procedures to ensure that any required rebate payments are made to the Service on a timely basis;

(5) Procedures to ensure that any funds or accounts that are subject to yield restriction are specifically identified and that yield restriction requirements are met for such funds or accounts, either by means of investment or yield reduction payments;

(6) Procedures to ensure that rebate and yield restriction computations and payments are determined in a manner consistent with the final allocation of proceeds to expenditures;

(7) Procedures to ensure that any funds or accounts that are treated as containing gross proceeds of the issue, but which are not directly funded with proceeds of the issue (for example, any "sinking funds" or "pledged funds" that are treated as "replacement proceeds"), are specifically identified for review for compliance with investment restrictions.

05. *Reasonable procedures for the review and allocation of expenditures of proceeds.*

(1) *In general. Reasonable procedures for the review and allocation of expenditures of bond proceeds* mean reasonable procedures that are intended to ensure that bond proceeds are used for qualifying expenditures including at least the following elements--

(a) Review to confirm that each amount treated as an expenditure was a cash outlay to an unrelated party to the issuer;

(b) Review to confirm that each amount for a working capital expenditure is permitted under applicable restrictions of the Code and regulations (for example, is permitted under the "proceeds-spent-last" rule for working capital expenditures in § 1.148-6(d) or the limitation on financing working capital expenditures with available project proceeds of §§ 54AA);

(c) Review to confirm that each amount treated as an expenditure did not involve a noncustomary prepayment (that is, a prepayment that would give rise to investment property because it is noncustomary);

(d) Review to confirm that the final determination of how bond proceeds are spent is consistent with the qualified use requirements that apply to the issue, including any applicable restrictions on financing issuance costs;

(e) In the case of qualified 501(c)(3) bonds, review to confirm that the final determination of how bond proceeds are spent is consistent with the public approval of the issue;

(f) Review to confirm that the final determination of how bond proceeds are spent is consistent with any restrictions on the minimum weighted average maturity of the capital expenditure property financed with proceeds of the bonds set forth in the Code or applicable federal income tax regulations; and

(g) Review to confirm that the method for allocating proceeds to expenditures, if different than a specific tracing method, is stated.

(2) *Procedure for execution of a final proceeds expenditure allocation certificate.* Under §§ 1.141-6 and 1.145-2 allocations to expenditures generally may be made using any reasonable, consistently applied accounting method. The adoption and implementation of a procedure requiring the execution of a final proceeds expenditure allocation certificate within the time period required by applicable regulations is a strong factor in establishing that procedures for the final review and allocation of bond proceeds is reasonable. In general, issuers may allocate proceeds to expenditures for a period ending 18 months after the financed project is placed in service, as further set forth in § 1.148-6(d).

06. *Reasonable procedures for periodic monitoring of use of financed property.*

(1) *Reasonable procedures for periodic monitoring of use of financed property* mean reasonable procedures that are intended to ensure that use of bond-financed property meets the applicable use-of-proceeds requirements including at least the following elements –

(a) Procedures to ensure that each contract for use of bond-financed property is reviewed for compliance with the applicable qualified use requirements by an employee knowledgeable the applicable legal standards (for example, the legal standards for service contracts set forth in Rev. Proc. 97-13, as amended), before the contract is entered into or renewed;

(b) Procedures to monitor and measure the actual percentage amount of nonqualified use during the period bonds of an issue are outstanding;

(c) Procedures requiring the implementation of a remedial action permitted under applicable regulations, or the submission of a voluntary closing agreement request to the Service, promptly after noncompliance with the applicable qualified use requirements is identified, including policies devoting sufficient resources to implementing remedial actions or making voluntary closing agreement requests, as may be required; and

(d) Procedures for periodic training of employees responsible for periodic monitoring in the types of actions that can result in nonqualified use of bond-financed property, in the availability of remedial actions and voluntary closing agreement requests to correct nonqualified use, and in the applicable legal standards for determining whether a contract for use of bond-financed property results in qualified use or nonqualified use.

(2) *Examples.* The following are examples of reasonable procedures relating to the periodic monitoring of use of financed property.

Example 1. State C seeks to adopt reasonable procedures for the periodic monitoring of use of financed property of its general obligation bonds. In order to simplify the administrative burden of compliance review and record retention, State C adopts the following conservative conventions. State C's procedures generally require that the amount private business use of proceeds of any bond issue will not be permitted to exceed the lesser of 5 percent or $15,000,000, even though a 10 percent limitation applies in most cases under § 141, except in the case of unrelated or disproportionate private business use. In the case of bond issues to which this conservative procedure is applied, State C does not retain any books and records sufficient to determine whether any private business use is unrelated or disproportionate. State C's procedures also provide, however, that the amount of private business use of a bond issue may be permitted to exceed 5 percent, provided that the attorney within the Attorney General's office knowledgeable in the applicable private activity bond rules makes a special review of any private use arrangements to determine whether they result in unrelated or disproportionate use, and State C maintains records sufficient to establish whether any private use is treated as unrelated or disproportionate. This is a reasonable procedure relating to the periodic monitoring of financed property.

Example 2. District D seeks to adopt reasonable procedures for the periodic monitoring of use of financed property of its water revenue bonds. In order to simplify the administrative burden of compliance review and record retention, District D adopts the following conservative conventions. District D's procedures generally require that the amount of private business use of proceeds will not be permitted to exceed the lesser of 10 percent or $15,000,000 determined on an annual basis, even though measuring private business use on an average basis over a measurement term which may be as long as the term of a bond issue is

generally permitted. Because of the nature of the projects financed by District D (for example, water plants), District D is able to determine with a high degree of confidence for each issue that no use of financed property that results in private business use would be treated as unrelated or disproportionate use. District D's procedures require that its finance director must monitor private business use of the property financed by each issue on an annual basis to determine with a high degree of confidence that that amount does not exceed the permitted limit, but do not require a computation of the exact amount of private business use. For purposes of determining the amount of private business use in prior years during the term of an issue, District D conservatively assumes that the amount of private business use was the maximum permitted amount, so that District D does not benefit from the rule that permits private business use to be determined on an average basis over a measurement term. This is a reasonable procedure relating to the periodic monitoring of financed property.

07. *Reasonable susceptibility to audit* means that procedures are set forth in written form in a manner that is reasonably susceptible to either internal or external audit to determine whether the employees, departments, or functions of the issuer that are identified as responsible for specific compliance task responsibilities have met those responsibilities on a timely basis. The requirement of reasonable susceptibility to audit does not require that compliance with the procedures be actually audited by an internal or external auditor at any specific intervals.

Section 4. Other Definitions

01. *Bond* means an obligation of a State or local government that is intended to be an obligation the interest on which is excludable from gross income under § 103, a qualified tax credit bond under § 54A(d), a Build American Bond under § 54AA, or a Recovery Zone Economic Development Bond under § 1400U-2.

02. *Bond Requirements* means the requirements of §§ 103, 141 through 150, 54, 54A, 54AA, and 1400U-2 that apply to an issue.

03. *Category of Bonds* generally means a type of Bonds subject to substantially the same requirements under the Code. For example, each of the following is a different Category of Bonds: qualified 501(c)(3) bonds issued under § 145; qualified mortgage revenue bonds issued under § 143; and each different type of exempt facility bond issued under § 142. Bonds are not treated as different Categories, however, merely because they may be subject to different regulations or other published guidance or are subject to different amended versions of the same subsection of the Code.

In the case of Governmental Bonds, an issuer may in addition chose to treat different types of obligations issued under substantially different State law authority as different Categories of Bonds. For example, an issuer may determine to treat each of general obligation bonds, water and sewer revenue bonds, and tax increment bonds as a different Category of Bonds.

04. *Conduit Borrower* is defined in § 1.150-1(b) and generally means the obligor on a purpose investment.

05. *Conduit Financing Issue* is defined in § 1.150-1(b) and generally means an issue the proceeds of which are used or are reasonably expected to be used to finance at least one purpose investment representing at least one conduit loan to one Conduit Borrower.

06. *Conduit Financing Issuer* means the actual issuer of a Conduit Financing Issue.

07. *Detailed Records of Expenditures* generally mean detailed records of all expenditures of proceeds of an issue including at least the following information: (1) the amount of each expenditure; (2) information sufficient to identify the separate project or purpose of each expenditure; (3) identification of the specific unrelated party (for example, the vendor or contractor) receiving the payment; (4) the date of the expenditure on which the expenditure was made; (5) except as provided by this section, the reasonably expected weighted average maturity of each separate project or purpose; and (6) the placed in service date of each separate project or purpose that is a capital expenditure. In general, detailed records of expenditures include invoices and checks. Detailed Records of Expenditures may include records relating to equity contributions to projects financed with proceeds.

In the case of proceeds used for working capital purposes subject to the "proceeds-spent-last" rule in § 1.148-6(d)(3), Detailed Records of Expenditures include cash flow statements, financial statements and other records reasonably sufficient to establish the amount of the deficit amount material to determining whether proceeds are treated as expended.

08. *Detailed Records of Investments* means detailed records all investments of gross proceeds of an issue generally including the following information: (a) purchase price (including the amount of accrued interest stated separately); (b) nominal rate of interest; (c) par or face amount; (d) purchase date; (e) maturity date; (f) amount or original discount or premium (if any); (g) general type of investment; (h) frequency of periodic payments (and actual dates and amounts of receipts); (i) period of compounding; (j) date of disposition; (k) amount realized on disposition (including the amount of accrued interest stated separately); (l) in the case of guaranteed investment contracts and yield restricted defeasance escrow investments, transaction costs (e.g., commissions) incurred in acquiring, carrying, or disposing of the investments; and (m) if an investment is not traded on an established securities market, such as a guaranteed investment contract, or in a yield restricted escrow, market price data sufficient to establish that the purchase price (or disposition price) was not greater than (or less than) the arm's-length fair market value on the date of acquisition (or disposition) or, if earlier, on the date of a binding contract to acquire (or dispose of) the investment.

09. *Detailed Records of Use Arrangements* means detailed records of all arrangements for use of proceeds and property financed by an issue, including copies of all contracts for use of bond-financed property that may result in nonqualified use. In the case of a governmental bond, Detailed Records of Use Arrangements do not need to include records of arrangements that are general public use or of contracts for services that are solely incidental to the primary governmental function of the bond-financed property. In the case of a qualified 501(c)(3) bond, Detailed Records of Use Arrangements need to include records sufficient to determine whether the bond-financed property is used for an unrelated trade or business, regardless of the term of an arrangement.

Example. County E issues general obligation bonds to finance a parking garage, which are intended to be tax-exempt governmental bonds. County E enters into the following types of contracts for use of the parking garage: (a) a service contract for management of the parking facility; (b) a janitorial contract for the parking garage office; and (c) monthly contracts for use of parking spaces, which are offered to the general public on the basis of rates that are generally applicable and uniformly applied. In connection with the issuance of the bonds, County E was advised by bond counsel that contracts of the nature of the janitorial contract was incidental to the primary governmental function of the parking garage and that arrangements of the nature of the monthly parking contracts were general public use arrangements. The Detailed Records of Use Arrangements for this issue of bonds are required to include the management contract for operation of the parking garage, but not the janitorial contract or the monthly parking contracts.

10. *General Record Retention Period* generally means the period ending on the date that is three years after the last bond of an issue is retired.

11. *Governmental Bond* means an obligation issued under § 103 of the Code that is not a private activity bond under § 141, a Build America Bond issued under § 54AA, and a Recovery Zone Economic Development Bond issued under § 1400U-2.

12. *Issuer* generally means the entity that actually issues an issue and, unless the context or a provision clearly requires otherwise, each conduit borrower for the issue.

13. *Minimum Detailed Record Retention Period* means a period that is the shorter of (1) six years after the relevant action or event to which a record relates and (2) the General Record Retention Period. In the case of records relating to investments, the Minimum Detailed Record Retention Period generally begins on the date of the applicable payment or receipt. In the case of records relating to expenditures of proceeds, the Minimum Detailed Record Retention Period generally begins not earlier than the date on which proceeds are actually treated as paid to an unrelated person. In the case of records relating to qualified use of bond proceeds or bond-financed property, the Minimum Detailed Record Retention Period generally begins not earlier than the last date on which an arrangement for

use of proceeds or financed property terminates. In the case of records relating to elections required or permitted to be made under the Code or Income Tax Regulations, the Minimum Detailed Record Retention Period is the same as the General Record Retention Period.

14. *Project* means a project as defined for purposes of the allocation and accounting rules under § 141 of the Code, as set forth under § 1.141-6(a). In general, the term project means one or more facilities or capital projects, or other property that meets each of the following requirements: (1) the facilities or capital projects are functionally related or integrated and are located on the same site or reasonably adjacent sites and (2) the facilities or capital projects are reasonably expected to be placed in service within the same 12-month period.

15. *Qualified Use Compliance Certificate* means a certificate executed by a responsible officer for each issue containing the following information for the period covered by the certificate: (1) a list of all contractual arrangements for use of the proceeds or property financed by the issue, including identification of any contractual arrangements resulting in nonqualified use; (2) a certification that all such arrangements have been reviewed to determine whether they result in nonqualified use, and (3) a certification of the total amount of nonqualified use of bond-financed property (as a percentage of proceeds or net proceeds) for the period. In general, for this purpose a responsible officer must be an officer or employee of the issuer with authority to make certifications under state or local law who either is knowledgeable in the types of actions that can result in nonqualified use of bond-financed property, in the availability of remedial actions and voluntary closing agreements to correct nonqualified use, and in the applicable legal standards for determining whether a contract for use of bond-financed property results in qualified use or nonqualified use or has consulted with a person who is knowledgeable in such matters in connection with execution of a Qualified Use Compliance Certificate. For example, a responsible officer may consult with an independent bond counsel or other professional in connection with execution of a Qualified Use Compliance Certificate, but is not required to do so.

A Qualified Use Compliance Certificate may be in any reasonable form, and may be in the form of more than one certificate, provided that all of the required information is set forth. For example, a properly completed Schedule K to Form 990 will meet the requirement for certifications to the effect that all arrangements have been reviewed to determine whether they result in nonqualified use and regarding the amount of nonqualified use of bond-financed property. Accordingly, a Qualified Use Compliance Certificate may consist of a properly completed Schedule K together with a separately maintained list of all contractual arrangements for use of the proceeds of the bond-financed property including an identification of any contractual arrangements resulting in nonqualified use.

In the case of Governmental Bonds, a Qualified Use Compliance Certificate must be completed on a basis not less frequently than the period rebate is or would be due to be paid to the United States under § 148 (for example, not less frequently

than a period 5 years if no special election is made and is all bonds of the issue are not retired during that period).

In the case of Qualified 501(c)(3) Bonds, a Qualified Use Compliance Certificate must be completed on an annual basis and must also include a list of all unrelated trade or business use activities or arrangements resulting in nonqualified use of the bond-financed property.

16. *Refunding Issue* is defined in § 1.150-1(d) and generally means an issue of obligations the proceeds of which are used to pay principal, interest or redemption price on another issue (a prior issue).

17. *Summary Record of Expenditures* means a statement or statements summarizing all expenditures of proceeds of an issue including at least the following information: (1) the amount of expenditure for each separate project or purpose; (2) a description of each separate project or purpose; (3) date of the expenditure or reasonable date range during which the expenditure was made; (4) except as provided by this section, the reasonably expected weighted average maturity of each separate project or purpose; and (5) the placed in service date of each separate project or purpose that is a capital expenditure or reasonable placed in service date range. A Summary Record of Expenditures may include records relating to equity contributions to projects financed with proceeds.

For this purpose, the "project or purpose" of an expenditure must be sufficiently detailed to be the basis of determining whether the issue meets the applicable qualified use of proceeds and bond-financed property restrictions. For example, all capital expenditures for a new building generally may be treated as a single project or purpose if the entire building may be treated as a single project for purposes of the private activity bond restrictions of § 141. In the case of qualified 501(c)(3) bonds, the description of project or purpose of an expenditure must include information sufficient to establish that the project or purpose is within the scope of expenditures permitted under the public approval of the issue. Expenditures for Issuance Costs must be stated as a separate project or purpose. Expenditures for working capital purposes must be stated as a separate project or purpose or separate projects or purposes, as appropriate. Expenditures for qualified guarantee fees must be separately stated.

18. *Summary Records of Investments* means a statement or statements summarizing all investments of gross proceeds of an issue including at least the following information: (1) the amount paid for each investment; (2) the date the payment for each investment is made; (3) the amount each receipt from each investment is made; and (4) the date each receipt is received. A rebate report summarizing investment activity for a period, regardless of whether the rebate report uses the "investment method" showing all reinvestments or the "disbursement method" showing only payments for investments and payments for expenditures is an acceptable Summary Record of Investments.

Section 5. Scope

This revenue procedure applies to obligations of a State or local government that are intended to be an obligations the interest on which is excludable from gross income under § 103 and which are not a private activity bonds under § 141, obligations that are intended to qualify as qualified 501(c)(3) bonds under § 145, obligations that are intended to qualify as Build American Bonds under § 54AA, and obligations that are intended to qualify as a Recovery Zone Economic Development Bonds under § 1400U-2.

Section 6. Operating Guidelines for Safe Harbor Bond Compliance Procedures

01. *In general.* An issuer that has adopted and in good faith implemented all of the safe harbor bond compliance procedures set forth in section 3 of this revenue procedure with respect to any Category of Bonds may conclusively establish the factual and other matters material to compliance with the applicable Bond Requirements described in this section. In general, an issuer may conclusively establish only factual matters under this revenue procedure, except that an issuer may also establish whether prior use of financed property was qualified use as a legal matter by means of a Qualified Use Compliance Certificate. For example, records relating to investments maintained under this revenue procedure will not conclusively establish whether, in the case of a refunding issue, an issuer's determination of transferred proceeds used a method permitted under the applicable regulations.

02. *Service review of qualification.* The general requirement that safe harbor bond compliance procedures must be reasonable is intended to provide issuers with flexibility to meet the substantive requirements of the safe harbor using any reasonable method, taking into account the issuer's particular facts and circumstances. If an issuer in good faith adopts and implements bond compliance procedures that are intended to meet all of the requirements of section 3 of this revenue procedure, the Service ordinarily will not challenge in an examination the conclusive effect of records retained before the date the examination is commenced (in a manner taking into account records required to be maintained during the applicable Minimum Detailed Record Retention Period). The Service may determine in an examination of a bond issue, however, that the bond compliance procedures of an issuer do not meet all of the requirements of section 3 of this revenue procedure and that new records retained after the date of any such determination will not have conclusive effect on a prospective basis, even if an issuer has in good faith adopted and implemented bond compliance procedures.

03. *Investment requirements.* An issuer may conclusively establish the amounts paid and received on investments of gross proceeds of an issue by maintaining a Summary Record of Investments for the issue, provided that the issuer also maintains Detailed Records of Investments of gross proceeds of the issue for at least the Minimum Detailed Record Retention Period. A Summary Record of

Investments will not, however, conclusively establish that investments that are guaranteed investment contracts or yield restricted defeasance escrows were acquired or sold at fair market value.

04. *Bond proceeds expenditure requirements*.

(1) *In general*. An issuer may conclusively establish the expenditure of proceeds of an issue by maintaining a Summary Record of Expenditures for the issue, provided that the issuer also maintains a Detailed Record of Expenditures for the Minimum Detailed Record Retention Period.

(2) *Equity contributions*. An issuer may conclusively establish the amount of equity contributions to a project financed with proceeds in the same manner as the expenditure of proceeds may be established under this revenue procedure.

(3) *De minimis rule*. An issuer may conclusively establish that an amount of proceeds of an issue not exceeding 5 percent of the proceeds of the issue and not exceeding $250,000 for any project or purpose are expended for a qualified use, provided that the issuer otherwise has adopted and implemented safe harbor bond compliance procedures for the issue and in good faith reasonably believes that the proceeds were expended for a qualified use. Multiple projects or purposes may be eligible for this $250,000 exception, provided that, in the aggregate, the projects or purposes qualifying for the exception do not exceed 5 percent of the proceeds of the issue.

(4) *Special rule for working capital expenditures*. An issuer may conclusively establish that proceeds of an issue are spent on working capital expenditures that are directly related to capital expenditures financed by the issue to the extent permitted by § 1.148-6(d)(3)(ii)(A)(5) (that is, in general in an amount not exceeding 5 percent of the sale proceeds of the issue) if (a) the issuer reasonably expected on the date of issuance that the amount of working capital expenditures that are so directly related would at least equal the amount treated as expended; and (b) the issuer does not treat the working capital expenditures as made sooner than on a pro rata basis relative to the capital expenditures to which the working capital expenditures are directly related.

05. *Requirements for qualified use of proceeds and financed property*.

(1) *In general*. An issuer may conclusively establish whether the proceeds and property financed by an issue are used for qualified use by maintaining a Qualified Use Compliance Certificate for each relevant period, provided that the issuer also maintains a Detailed Record of Use Arrangements for the applicable Minimum Detailed Record Retention Period. A Qualified Use Compliance Certificate will not, however, conclusively establish whether proceeds and property financed by an issue are used for qualified use with respect to any arrangement if the Service commences an examination of the issue during the Minimum Detailed Record Retention Period for that arrangement. A Qualified Use Compliance Certificate

may be used by an issuer, for example, to determine the average amount of nonqualified use over the applicable measurement period under § 1.141-3(g).

(2) *De minimis rule.* An issuer may conclusively establish that property financed with amount of proceeds of an issue not exceeding 5 percent of the proceeds of the issue and not exceeding $250,000 for any project or purpose is used for a qualified use, provided that the issuer otherwise has adopted and implemented safe harbor bond compliance procedures for the issue and in good faith reasonably believes that the proceeds were used for a qualified use. Multiple projects or purposes may be eligible for this $250,000 exception, provided that, in the aggregate, the projects or purposes qualifying for the exception do not exceed 5 percent of the proceeds of the issue.

Section 7. Application to Refunding Issues

01. *In general.* This section sets forth the treatment of records for Refunding Issues under this revenue procedure. Refunding Issues may consist of all of an issue or a portion of a multipurpose issue that refunds all or a portion of a prior issue.

02. *Investment records.* Records relating to investments of gross proceeds of a prior issue are material to compliance of a Refunding Issue only to the extent that those investments become gross proceeds of the Refunding Issue (either as transferred proceeds or as replacement proceeds).

03. *Expenditure records.* Records relating to expenditures of proceeds of a prior issue are material to compliance of a Refunding Issue.

04. *Records of use of bond-financed property.* Records relating to use of property financed with a prior issue are material to compliance of a Refunding Issue to the extent that such prior use is material for determining whether the combined issue rule set forth in § 1.141-13(b) applies to the Refunding Issue and the prior issue. Accordingly, in general records relating to use of financed property on and after December 19, 2005 and records relating use of financed property after the issue date of prior bonds issued on or after May 16, 1997 are material to compliance of the Refunding Issue.

Section 8. Application to Conduit Financing Issues

01. *In general.* In the case of a conduit financing issue, the different elements of safe harbor bond compliance procedures may be adopted and implemented either by the Conduit Borrower or the Conduit Financing Issuer, provided that the assignment of responsibility is set forth in the books and records for the issue. For example, this requirement is met if the bond documents assign all post-issuance compliance responsibilities to the Conduit Borrower, so that the Conduit Financing Issuer has no record retention obligations. In another example, a Conduit Financing Issuer may assume responsibility for compliant investment of gross proceeds (including compliance with yield restriction and rebate requirements) and

books and records relating to such investments, but not responsibility for other bond compliance procedures. Safe harbor bond compliance procedures may be implemented in this manner provided that the assignment of responsibility is set forth in the books and records for the issue.

02. *Requirement of Conduit Borrower to make certifications to Conduit Financing Issuer regarding adoption and implementation of safe harbor bond compliance procedures.* In the case of a Conduit Financing Issue, a Conduit Borrower will be treated as having adopted and implemented safe harbor bond compliance procedures (or elements of such procedures) only if (1) the Conduit Borrower provides a certification to the Conduit Financing Issuer which are maintained in the books and records for the issue that it has adopted and implemented reasonable bond compliance procedures that are intended to meet the requirements of section 3 of this revenue procedure, and (2) the Conduit Borrower provides periodic certifications to the Conduit Financing Issuer which are maintained in the books and records for the issue to the effect that it has in fact implemented reasonable bond compliance procedures that are intended to meet the requirements of section 3 of this revenue procedure. For this purpose a periodic certification may be provided in intervals of not greater than 5 years and may be in the form of a general bond covenant compliance certificate provided to the Conduit Financing Issuer.

03. *Special requirements for Pooled Financing Bonds.* In the case of Pooled Financing Bonds, a Conduit Financing Issuer must also adopt and implement reasonable procedures that are intended to ensure compliance with the applicable provisions of the Code and the regulations that apply to Pooled Financing Bonds (for example, the requirements of § 149(f)) in order to meet the requirements of section 3 of this revenue procedure.

Section 9. Effect on Other Documents

01. The period permitted for allocating proceeds to expenditures under Treas. Reg. § 1.148-6(d) is extended for certain issues as set forth in section 10 of this revenue procedure. Guidelines published by the Service for maintenance of records under an electronic storage system and maintenance of records with an automated data processing system apply to records maintained under this revenue procedure. *See* Rev. Proc. 97-22 and Rev. Proc. 98-25.

Section 10. Effective Date and Transition Rules

.01 *General effective date.* This revenue procedure generally applies to bonds issued after [the date of publication of this revenue procedure in the Internal Revenue Bulletin.]

.02 *Elective retroactive application to particular bond issues.* An issuer may apply this revenue procedure to any bonds issued on or before [the date of publication of this revenue procedure in the Internal Revenue Bulletin], provided

that the issuer must consistently apply this revenue procedure at least to all issues of the same Category of Bonds that are issued after December 31, 2002 and before [the date of publication of this revenue procedure in the Internal Revenue Bulletin] and that are not refunding bonds. In the case of a Conduit Financing Issues, the provisions of this section 10.2 apply separately to the same Category of Bonds issued for the benefit of the same Conduit Borrower.

.03 *Special transitional relief for period to determine how bond proceeds are spent.* If an issuer chooses to consistently apply this revenue procedure to all issues of the same Category of Bonds that are issued after December 31, 2002 and before [the date of publication of this revenue procedure in the Internal Revenue Bulletin], the period for making a final allocation of proceeds to expenditures set forth in §§1.141-6(a), 1.148-6(d) and 1.145-2(a) is extended for those issues for a period of one year after [the date of publication of this revenue procedure in the Internal Revenue Bulletin]. In the case of Conduit Financing Issues, the provisions of this section 10.3 apply separately to the same Category of Bonds issued for the benefit of the same Conduit Borrower.

04. *Special transitional rule for Review of Qualified Use and Completion of Qualified Use Compliance Certificates*. If an issuer chooses to apply this revenue procedure as permitted by this section 10 to bonds issued on or before [the date of publication of this revenue procedure in the Internal Revenue Bulletin], the issuer may complete a Qualified Use Compliance Certificate to conclusively establish whether the proceeds and property financed by an issue are used for qualified use in the manner described in section 6.04 of this revenue procedure. The period of time for completing a Qualified Use Compliance Certificate described in section 4.15 of this revenue procedure does not apply to a Qualified Use Compliance Certificate that is completed not later than [date that is one year after the date of publication of this revenue procedure in the Internal Revenue Bulletin], so that the period for completing Qualified Use Compliance Certificates is extended.

Sarah Crabtree

From: Trina Shropshire-Paschal [Trina@imla.org]
Sent: Friday, September 11, 2009 5:55 PM
To: Sarah Crabtree; Devala Janardan
Subject: FW: Bond Compliance Workshop Section 3(c)
Attachments: image001.jpg; @

Importance: High

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Future IMLA Sponsored Events:
IMLA's Institute for Local Government Lawyers
Miami, FL: October 17, 2009
IMLA's 74th Annual Conference, Miami, Fl :October 18-21, 2009
Visit www.imla.org for current listing of teleconferences

From: Jackson, Robin Jones [mailto:RJones-Jackson@miamigov.com]
Sent: Friday, September 11, 2009 5:49 PM
To: Mary Vlach; Chuck Thompson; Trina Shropshire-Paschal; Veronica Kleffner
Cc: LSmithLalla@SSD.com; emagee@foley.com; 'Jolinda Herring'; Iliana Irizarry; DMS@knoxSeaton.com; GFK@knoxseaton.com; peter.dame@akerman.com; Giles-KleinB@gtlaw.com; EMarquez@firstsw.com; Stubbs, Shakena
Subject: Bond Compliance Workshop Section 3(c)
Importance: High

Note to All: In case the attachment is not opening, the Memorandum is copied below.

From: Smith-Lalla, Lori [mailto:LSmithLalla@SSD.com]
Sent: Wednesday, January 28, 2009 11:03 AM
To: Jackson, Robin Jones
Cc: Cooper, Todd L.
Subject: Rev. Proc. 97-13 - Management Agreements
Importance: High

This message has been archived. View the original item

Attached is a Copy of a Memorandum produced by Squire Sanders & Dempsey's tax attorneys regarding the application of Revenue Procedure 97-13 and 2001-39. Please feel free to contact either myself or Todd Cooper with any questions that you may have regarding this Memorandum.

<<SSD_CENTRAL-#34311-v1-Tax_Certs_-_Management_Contract_Summary.DOC>>

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M E M O R A N D U M

Revised IRS Guidelines Applicable to Management Contracts Involving Use of Bond-Financed Facilities

In 1997, the Internal Revenue Service ("IRS") issued final regulations regarding the private business use of tax-exempt bond proceeds and bond-financed facilities. The final regulations generally apply to bonds issued on or after May 16, 1997.[1] The IRS also released Rev. Proc. 97-13 setting forth conditions under which management and other service contracts involving the use of bond-financed facilities will be treated as not giving rise to private business use of such facilities. Rev. Proc. 97-13 is effective for any management contract entered into, materially modified, or extended (other than pursuant to a renewal option) on or after May 16, 1997.[2]

In July 2001, the IRS released Rev. Proc. 2001-39 modifying and clarifying Rev. Proc. 97-13 effective for any management contract entered into, materially modified, or extended (other than pursuant to a renewal option) on or after July 19, 2001. In addition, an issuer may apply Rev. Proc. 2001-39 to any management contract entered into prior to July 9, 2001.

Management contracts may result in private business use.

Depending on the terms, a contract under which a private person provides management or other services to a governmental unit or a Section 501(c)(3) organization (or a contract that provides for an incentive payment) involving all or a portion of a bond-financed facility (hereinafter referred to as a "management contract") may result in private business use of that facility. Private business use of a bond-financed facility may preclude, or result in the loss of, tax-exempt status for interest on the bonds issued to finance the facility. Regs. § 1.141-3(b)(4)(i).

As under prior rules, a management contract generally will result in private business use if the contract provides for compensation based, in whole or in part, on a share of net profits from the operation of a bond-financed facility. Regs. § 1.141-3(b)(4)(i).

Certain arrangements treated as not giving rise to private business use.

The final regulations provide that the following types of arrangements generally will not be treated as management contracts that give rise to private business use:

1. Contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing, or similar services);

2. The mere granting of admitting privileges by a hospital to a doctor, even if these privileges are conditioned on the provision of de minimis services, if those privileges are available to all qualified physicians in the area, consistent with the size and nature of the hospital facilities;

3. A contract to provide for the operation of a facility or system that consists predominantly of public utility property if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider;

4. A contract to provide services if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties. Regs. § 1.141-3(b)(4)(iii).

IRS Guidelines Applicable to Management Contracts
Rev. Proc. 97-13, as mod. by Rev. Proc. 2001-39 (hereinafter, "Rev. Proc. 97-13")

1. ***Permissible compensation arrangements that do not result in private business use.***

a. ***15-year term -- 95% periodic fixed fee***. At least 95% of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee, and the term of the contract, including all renewal options, does not exceed the lesser of (i) 80% of the reasonably expected useful life of the financed property, and (ii) 15 years. A one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached does not cause the compensation to be other than periodic and fixed if that award is equal to a single, stated dollar amount. Section 5.03(1).

"Periodic fixed fee" means a stated dollar amount for services rendered for a specified period of time, for example, a stated dollar amount per month. The stated dollar amount may automatically increase according to a specified, objective, external standard (such as the Consumer Price Index) that is not linked to the output or efficiency of a facility.

For purposes of the Rev. Proc. 97-13 guidelines, a contract term includes all periods covered by ***renewal options***. "Renewal option" means a provision under which the service provider has a legally enforceable right to renew the contract. A provision under which a contract is automatically renewed for one-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

b. ***10-year term -- 80% periodic fixed fee***. At least 80% of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee, and the term of the contract, including renewal options, does not exceed the lesser of (i) 80% of the reasonably expected useful life of the financed property, and (ii) 10 years. The one-time

incentive award exception described above also applies to this type of compensation arrangement. Section 5.03(2).

c. ***20-year term for certain public utility property*.** If all of the bond-financed property subject to the contract is a facility or system consisting of predominantly public utility property,[3] then "20 years" is substituted for "15 years" and "10 years," respectively, for arrangements described above in paragraphs a and b. Section 5.03(3).

d. ***5-year term, cancellable after 3d year -- 50% periodic fixed fee, 100% capitation, or combination of capitation and periodic fixed fee*.** (i) At least 50% of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee, or (ii) all of the compensation is based on a capitation fee or a combination of a capitation fee and a periodic fixed fee, the term of the contract, including all renewal options, does not exceed 5 years, and the contract is terminable without penalty or cause at the end of the third year of the contract term. Section 5.03(4).

"Capitation fee" means a fixed periodic amount for each person for whom the service provider or the qualified user assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially. A capitation fee may include a variable component of up to 20% of the total capitation fee designed to protect the service provider against risks such as catastrophic loss. A fixed periodic amount may include an automatic increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective, external standards.

e. ***3-year term, cancellable after 2d year -- 100% per-unit fee or combination of per-unit and periodic fixed fee*.** All of the compensation for services is based on a per-unit fee or a combination of a per-unit fee and a periodic fixed fee, the term of the contract, including all renewal options, does not exceed 3 years and the contract is terminable by the qualified user on reasonable notice without penalty or cause at the end of the second year of the contract term. Section 5.03(5).

"Per-unit fee" means a fee based on a unit of service that is specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the Medicare program, or the qualified user (i.e., the governmental unit or 501(c)(3) organization). Examples of per-unit fees include a stated dollar amount for each specified medical procedure performed, car parked, or passenger mile. A fee that is a stated dollar amount specified in the contract does not fail to be a per-unit fee as a result of a provision under which the fee may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective, external standards.

f. ***2-year term, cancellable after 1st year -- 100% percentage of fees charged or combination of per-unit fee and percentage of revenues or expenses***. All the compensation for services is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenues or expenses (but not both), the term of the contract, including renewal options, does not exceed 2 years and the contract is terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the first year of the contract term. This safe

harbor applies only to contracts under which the service provider primarily provides services to third parties and management contracts involving a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of annual gross revenues and expenses. Section 5.03(6).

Penalties for terminating a contract include a limitation on the qualified user's right to compete with the service provider, a requirement that the qualified user purchase equipment, goods, or services from the service provider; and a requirement that the qualified user pay liquidated damages for cancellation of the contract. On the other hand, contract penalties generally do not include a requirement effective on cancellation that the qualified user reimburse the service provider for ordinary and necessary expenses or restrictions that prevent the qualified user from hiring key personnel of the service provider.

A contract termination penalty can be created by another contract between the service provider and the qualified user, such as a loan or guarantee by the service provider, if that contract contains terms that are not customary or arm's-length that could operate to prevent the qualified user from terminating the management contract (for example, provisions under which the other contract terminates if the management contract is terminated or that place substantial restrictions on the selection of a substitute service provider). Section 3.04.

2. ***For all management contracts, compensation must be reasonable and not based, in whole or in part, on net profits.*** A management contract must provide for reasonable compensation for services rendered, with no compensation based, in whole or in part, on a share of net profits from the operation of the bond-financed facility. Section 5.02(1). A productivity reward equal to a stated dollar amount based on increases or decreases in gross revenues (or adjusted gross revenues) or reductions in total expenses (but not both increases in gross or adjusted gross revenues and reduction in total expenses) in any annual period during the term of the contract generally does not cause the compensation to be based on a share of net profits. Section 5.02(3).

Reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties is not by itself treated as compensation to the service provider. Section 5.02(1).

3. No circumstances that substantially limit the qualified user's exercise of its contract rights.

a. ***In general***, the service provider must have no role or relationship with the qualified user that, in effect, substantially limits the qualified user's ability to exercise its rights, including cancellation rights, under the contract. Section 5.04(1).

b. ***Safe harbor.*** The above described requirement is satisfied if:

(i) Not more than 20% of the voting power of the governing body of the qualified user in the aggregate is vested in the service provider and its directors, officers, shareholders and employees;

(ii) Overlapping board members do not include the chief executive officers of the service provider or its governing body or the qualified user or its governing body; and

(iii) The qualified user and the service provider are not related parties. Section 5.04(2).

(Rev. June 2002)

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[1] In addition, the final regulations may be applied in whole, or the management contract provisions alone may be applied, to bonds issued before May 16, 1997.

[2] In addition, an issuer may apply Rev. Proc. 97-13 to any management contract entered into prior to May 16, 1997 without regard to whether the issuer also elects to apply the final regulations provisions relating to management contracts retroactivity to existing bonds.

[3] E.g., electrical energy, water, or sewage disposal services, gas or steam through a local distribution system, telephone or other communication services furnished or sold by COMSAT or the transportation of gas or steam by pipeline, if the rates in all cases have been established or approved by a State or political subdivision thereof, an agency or instrumentality of the United States or by a public service or public utility commission or other similar body of any State or political subdivision thereof. Internal Revenue Code § 168(i)(10).

Rule 15c2-12 Municipal Securities Disclosure

Preliminary Note: For a discussion of disclosure obligations relating to municipal securities, issuers, brokers, dealers, and municipal securities dealers should refer to Securities Act Release No. 7049, Securities Exchange Act Release No. 33741, FR–42 (March 9, 1994). For a discussion of the obligations of underwriters to have a reasonable basis for recommending municipal securities, brokers, dealers, and municipal securities dealers should refer to Securities Exchange Act Release No. 26100 (Sept. 22, 1988) and Securities Exchange Act Release No. 26985 (June 28, 1989).

(a) *General.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for any broker, dealer, or municipal securities dealer (a "Participating Underwriter" when used in connection with an Offering) to act as an underwriter in a primary offering of municipal securities with an aggregate principal amount of $1,000,000 or more (an "Offering") unless the Participating Underwriter complies with the requirements of this section or is exempted from the provisions of this section.

(b) *Requirements.*

(1) Prior to the time the Participating Underwriter bids for, purchases, offers, or sells municipal securities in an Offering, the Participating Underwriter shall obtain and review an official statement that an issuer of such securities deems final as of its date, except for the omission of no more than the following information: The offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, any other terms or provisions required by an issuer of such securities to be specified in a competitive bid, ratings, other terms of the securities depending on such matters, and the identity of the underwriter(s).

(2) Except in competitively bid offerings, from the time the Participating Underwriter has reached an understanding with an issuer of municipal securities that it will become a Participating Underwriter in an Offering until a final official statement is available, the Participating Underwriter shall send no later than the next business day, by first-class mail or other equally prompt means, to any potential customer, on request, a single copy of the most recent preliminary official statement, if any.

(3) The Participating Underwriter shall contract with an issuer of municipal securities or its designated agent to receive, within seven business days after any final agreement to purchase, offer, or sell the municipal securities in an Offering and in sufficient time to accompany any confirmation that requests payment from any customer, copies of a final official statement in sufficient quantity to comply with paragraph (b)(4) of this rule and the rules of the Municipal Securities Rulemaking Board.

(4) From the time the final official statement becomes available until the earlier of—

(i) Ninety days from the end of the underwriting period or

(ii) The time when the official statement is available to any person from the Municipal Securities Rulemaking Board, but in no case less than twenty-five days following the end of the underwriting period, the Participating Underwriter in an Offering shall send no later than the next business day, by first-class mail or other equally prompt means, to any potential customer, on request, a single copy of the final official statement.

(5)

(i) A Participating Underwriter shall not purchase or sell municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that an issuer of municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement has undertaken, either individually or in combination with other issuers of such municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such securities, to provide the following to the Municipal Securities Rulemaking Board in an electronic format as prescribed by the Municipal Securities Rulemaking Board, either directly or indirectly through an indenture trustee or a designated agent:

(A) Annual financial information for each obligated person for whom financial information or operating data is presented in the final official statement, or, for each obligated person meeting the objective criteria specified in the undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final official statement, except that, in the case of pooled obligations, the undertaking shall specify such objective criteria;

(B) If not submitted as part of the annual financial information, then when and if available, audited financial statements for each obligated person covered by paragraph (b)(5)(i)(A) of this section;

(C) In a timely manner, notice of any of the following events with respect to the securities being offered in the Offering, if material:

(*1*) Principal and interest payment delinquencies;

(*2*) Non-payment related defaults;

(*3*) Unscheduled draws on debt service reserves reflecting financial difficulties;

(*4*) Unscheduled draws on credit enhancements reflecting financial difficulties;

(*5*) Substitution of credit or liquidity providers, or their failure to perform;

(*6*) Adverse tax opinions or events affecting the tax-exempt status of the security;

(*7*) Modifications to rights of security holders;

(*8*) Bond calls;

(*9*) Defeasances;

(*10*) Release, substitution, or sale of property securing repayment of the securities;

(*11*) Rating changes; and

(D) In a timely manner, notice of a failure of any person specified in paragraph (b)(5)(i)(A) of this section to provide required annual financial information, on or before the date specified in the written agreement or contract.

(ii) The written agreement or contract for the benefit of holders of such securities also shall identify each person for whom annual financial information and notices of material events will be provided, either by name or by the objective criteria used to select such persons, and, for each such person shall:

(A) Specify, in reasonable detail, the type of financial information and operating data to be provided as part of annual financial information;

(B) Specify, in reasonable detail, the accounting principles pursuant to which financial statements will be prepared, and whether the financial statements will be audited; and

(C) Specify the date on which the annual financial information for the preceding fiscal year will be provided.

(iii) Such written agreement or contract for the benefit of holders of such securities also may provide that the continuing obligation to provide annual financial information and notices of events may be terminated with respect to any obligated person, if and when such obligated person no longer remains an obligated person with respect to such municipal securities.

(iv) Such written agreement or contract for the benefit of holders of such securities also shall provide that all documents provided to the Municipal Securities Rulemaking Board shall be accompanied by identifying information as prescribed by the Municipal Securities Rulemaking Board.

(c) *Recommendations.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for any broker, dealer, or municipal securities dealer to recommend the purchase or sale of a municipal security unless such broker, dealer, or municipal securities dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of any event disclosed pursuant to paragraph (b)(5)(i)(C), paragraph (b)(5)(i)(D), and paragraph (d)(2)(ii)(B) of this section with respect to that security.

(d) *Exemptions.*

(1) This section shall not apply to a primary offering of municipal securities in authorized denominations of $100,000 or more, if such securities:

(i) Are sold to no more than thirty-five persons each of whom the Participating Underwriter reasonably believes:

(A) Has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment; and

(B) Is not purchasing for more than one account or with a view to distributing the securities; or

(ii) Have a maturity of nine months or less; or

(iii) At the option of the holder thereof may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.

(2) Paragraph (b)(5) of this section shall not apply to an Offering of municipal securities if, at such time as an issuer of such municipal securities delivers the securities to the Participating Underwriters:

(i) No obligated person will be an obligated person with respect to more than $10,000,000 in aggregate amount of outstanding municipal securities, including the offered securities and excluding municipal securities that were offered in a transaction exempt from this section pursuant to paragraph (d)(1) of this section;

(ii) An issuer of municipal securities or obligated person has undertaken, either individually or in combination with other issuers of municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such municipal securities, to provide the following to the Municipal Securities Rulemaking Board in an electronic format as prescribed by the Municipal Securities Rulemaking Board:

(A) At least annually, financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, as specified in the undertaking, which financial information and operating data shall include, at a minimum, that financial information and operating data which is customarily prepared by such obligated person and is publicly available; and

(B) In a timely manner, notice of events specified in paragraph (b)(5)(i)(C) of this section with respect to the securities that are the subject of the Offering, if material; and

(C) Such written agreement or contract for the benefit of holders of such securities also shall provide that all documents provided to the Municipal Securities Rulemaking Board shall be accompanied by identifying information as prescribed by the Municipal Securities Rulemaking Board; and

(iii) The final official statement identifies by name, address, and telephone number the persons from which the foregoing information, data, and notices can be obtained.

(3) The provisions of paragraph (b)(5) of this section, other than paragraph (b)(5)(i)(C) of this section, shall not apply to an Offering of municipal securities, if such municipal securities have a stated maturity of 18 months or less.

(4) The provisions of paragraph (c) of this section shall not apply to municipal securities:

(i) Sold in an Offering to which paragraph (b)(5) of this section did not apply, other than Offerings exempt under paragraph (d)(2)(ii) of this section; or

(ii) Sold in an Offering exempt from this section under paragraph (d)(1) of this section.

(e) *Exemptive authority.* The Commission, upon written request, or upon its own motion, may exempt any broker, dealer, or municipal securities dealer, whether acting in the capacity of a Participating Underwriter or otherwise, that is a participant in a transaction or class of transactions from any requirement of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such an exemption is consistent with the public interest and the protection of investors.

(f) *Definitions.* For the purposes of this rule—

(1) The term *authorized denominations of $100,000 or more* means municipal securities with a principal amount of $100,000 or more and with restrictions that prevent the sale or transfer of such securities in principal amounts of less than $100,000 other than through a primary offering; except that, for municipal securities with an original issue discount of 10 percent or more, the term means municipal securities with a minimum purchase price of $100,000 or more and with restrictions that prevent the sale or transfer of such securities, in principal amounts that are less than the original principal amount at the time of the primary offering, other than through a primary offering.

(2) The term *end of the underwriting period* means the later of such time as

(i) The issuer of municipal securities delivers the securities to the Participating Underwriters or

(ii) The Participating Underwriter does not retain, directly or as a member or an underwriting syndicate, an unsold balance of the securities for sale to the public.

(3) The term *final official statement* means a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter(s) and that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data, concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the Offering; and a description of the undertakings to be provided pursuant to paragraph (b)(5)(i), paragraph (d)(2)(ii), and paragraph (d)(2)(iii) of this section, if applicable, and of any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents available to the public on the Municipal Securities Rulemaking Board's Internet Web site or filed with the Commission.

(4) The term *issuer of municipal securities* means the governmental issuer specified in section 3(a)(29) of the Act and the issuer of any separate security, including a sepatate security as defined in rule 3b–5(a) under the Act.

(5) The term *potential customer* means (i) Any person contacted by the Participating Underwriter concerning the purchase of municipal securities that are intended to be offered or have been sold in an offering, (ii) Any person who has expressed an interest to the Participating Underwriter in possibly purchasing such municipal securities, and (iii) Any person who has a customer account with the Participating Underwriter.

(6) The term *preliminary official statement* means an official statement prepared by or for an issuer of municipal securities for dissemination to potential customers prior to the availability of the final official statement.

(7) The term *primary offering* means an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities, including any remarketing of municipal securities.

(i) That is accompanied by a change in the authorized denomination of such securities from $100,000 or more to less than $100,000, or

(ii) That is accompanied by a change in the period during which such securities may be tendered to an issuer of such securities or its designated agent for redemption or purchase from a period of nine months or less to a period of more than nine months.

(8) The term *underwriter* means any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except, that such term shall not include a person whose interest is limited to a commission, concession, or allowance from an underwriter, broker, dealer, or municipal securities dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance.

(9) The term *annual financial information* means financial information or operating data, provided at least annually, of the type included in the final official statement with respect to an obligated person, or in the case where no financial information or operating data was provided in the final official statement with respect to such obligated person, of the type included in the final official statement with respect to those obligated persons that meet the objective criteria applied to select the persons for which financial information or operating data will be provided on an annual basis. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents available to the public on the Municipal Securities Rulemaking Board's Internet Web site or filed with the Commission.

(10) The term *obligated person* means any person, including an issuer of municipal securities, 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 in the Offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities).

(g) *Transitional provision.* If on July 28, 1989, a Participating Underwriter was contractually committed to act as underwriter in an Offering of municipal securities originally issued before July 29, 1989, the requirements of paragraphs (b)(3) and (b)(4) shall not apply to the Participating Underwriter in connection with such an Offering. Paragraph (b)(5) of this section shall not apply to a Participating Underwriter that has contractually committed to act as an underwriter in an Offering of municipal securities before July 3, 1995; *except that* paragraph (b)(5)(i)(A) and paragraph (b)(5)(i)(B) shall not apply with respect to fiscal years ending prior to January 1, 1996. Paragraph (c) shall become effective on January 1, 1996. Paragraph (d)(2)(ii) and paragraph (d)(2)(iii) of this section shall not apply to an Offering of municipal securities commencing prior to January 1, 1996.

[54 FR 28813, July 10, 1989, as amended at 59 FR 59609, Nov. 17, 1994; 73 FR 76132, Dec. 15, 2008]

Disclosure Counsel Perspective
Post-Issuance Disclosure Requirements

Historical Background of Rule 15c2-12

The Securities and Exchange Commission (the "SEC") first adopted Rule 15c2-12 (the "Rule") in 1989 in an attempt to provide transparency to the municipal securities market. As adopted in 1989, and as still required today, the Rule requires an underwriter acting in a primary offering of municipal securities of $1,000,000 or more: (1) to obtain and review an official statement "deemed final" by an issuer of the securities, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (2) in non-competitive bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one exists) to potential customers; (3) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; and (4) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule's delivery requirement, and the requirement of the rules of the Municipal Securities Rulemaking Board ("MSRB"). In 1994 major amendments to the Rule were adopted. The 1994 amendments further prohibit a Participating Underwriter from purchasing or selling municipal securities covered by the Rule in a primary offering, unless the Participating Underwriter has reasonably determined that an issuer of municipal securities or an obligated person has undertaken in a written agreement or contract for the benefit of holders of such securities to provide specified annual information and event notices to certain information repositories. The information generally required to be filed pursuant to such an undertaking are commonly referred to as "annual filings," "material event notices" and "failure to file notices" (collectively "continuing disclosure"). The 1994 amendments to the Rule also amended the definition of "final official statement" to include a description of the issuer's or obligated person's continuing disclosure undertaking for the securities being offered, and of any instances in the previous five years in which the issuer or obligated person failed to comply, in all material respects, with undertakings in previous continuing disclosure agreements ("CDA"). Currently, the Participating Underwriter is required to reasonably determine that the issuer or obligated person has undertaken to provide annual filings , the material event notices and failure to file notices to EMMA, defined below.

EMMA

The Commission, pursuant to Release No. 34-59062 (the "Release") adopted amendments to the Rule in connection with the adoption and implementation of the MSRB's Electronic Municipal Market Access system (“EMMA”) for municipal securities disclosures, which eliminated Nationally Recognized Municipal Securities Information Repositories. The effective date of the amendments was July 1, 2009 (with certain document formatting requirements to be in compliance beginning January 1, 2010, as detailed below). In a nutshell, the amendments provide for the electronic submission of continuing disclosure documents, in a specified format and accompanied by specified

identifying information, to the MSRB alone, via EMMA. Access to the EMMA system is free to the public, although you may optionally subscribe to a fee-based real-time data stream.

Nuts and Bolts of EMMA

How to make a Submission Submissions may be made via the Internet or via a computer to computer data connection. All submission methods provide appropriate feedback to submitters for error correction and submission confirmation purposes. Submissions must be made in portable document format (PDF) – configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. On January 1, 2010, MSRB requires the documents to be word-searchable PDF. Diagrams, images and other non-textual elements are not required to be word-searchable due to current technical hurdles. Submitters are encouraged to immediately begin with word-searchable PDF – preferably native PDF or PDF normal files. Submissions are accepted from 8:30 a.m. to 6:00 p.m. Eastern time on MSRB business days and will be posted on EMMA within 15 minutes of acceptance.

Identifying Information At the time of the submission, the submitter must identify information necessary to accurately identify:

1. the category of information being provided;
2. the period covered by any annual financial information, financial statement or other financial information or operation data;
3. the issues or specific securities to which such documents are related (including CUSIPs, issuer name, state, issue description/securities name, dated date, maturity date, and/or coupon rate);
4. the name of any obligated person other than the issuer;
5. the name and date of the document; and
6. contact information for the submitter.

Password Protected Accounts Issuers and obligated persons have password protected accounts through which they will make their submissions. Using the account management facility of the same password protected account, issuers and obligated persons are able to designate agents to make submissions on their behalf and also revoke such a designation.

Agents are also be required to obtain a password protected account. If an agent is designated as such in a CDA, that agent would be permitted to act without a designation by the issuer or obligated person if the agent certified to such fact through the EMMA online account management utility. The issuer or obligated person is allowed to revoke the designation through its account using the account management utility. A conduit issuer can identify obligated persons and securities for which they are obligated as well using this same tool.

What can one find on EMMA? Currently, you can retrieve official statements (OSs) from 1990 to present, advance refunding documents (ARDs) from 1990 to present and trade price information in real-time and historically from 2005. The continuing disclosure submission made through EMMA has been integrated into the available OS, ARDs and trade price information.

Continuing Disclosure Requirements

At the time of issuance of tax-exempt bonds, the Issuer provides information to the capital markets of its financial condition through the issuance of an official statement. The Official Statement includes the Issuer's audited financial statements and descriptions of revenues, operations, management, litigation and other information that may be material to a bondholder in its decision to purchase Bonds. When the Bonds are issued, the Issuer covenants to annually update the information in the official statement and to provide its audited financial statements to the national repositories. In addition to the annual updates, the Issuer must also notify the markets of certain events by filing a notice with EMMA. Such events requiring notification are:

- Principal and interest payment delinquencies;
- Non-payment related defaults;
- Unscheduled draws on the debt service reserve fund reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity providers, or their failure to perform;
- Adverse tax opinions or events affecting the tax-exempt status of the security;
- Modifications to rights of security holders;
- Bonds calls;
- Defeasance;
- Release, substitution, or sale of property securing repayment of the Bonds;
- Rating changes; and
- Failure to provide required annual financial information, on or before the date specified in the written agreement or contract for Continuing Disclosure.

Penalty for Failure to File. Rule 15c2-12 requires that if an Issuer has previously covenanted to provide annual information and fails to timely provide the required annual financial information during the five year period preceding the issuance of bonds, a description of such failure must be included in the official statement for the bonds being offered.

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.

Proposed Amendments to Rule 15c2-12 and Their Effects

On July 15, 2009, the Securities and Exchange Commission (SEC) approved proposed amendments to its Rule 15c2-12. The SEC has proposed that these amendments, in their final form following public comment, will become effective the third month following the approval of the final changes to the Rule. These proposed amendments are the first significant overhaul of Rule 15c2-12 since the base Rule, which was adopted in 1989, was amended in 1994 to include secondary market disclosure requirements. These amendments will have significant implications for municipal issuers and borrowers of the proceeds of municipal bonds.

The proposed amendments affect the obligation to disclose the occurrence of the "listed events," and remove an exemption from continuing disclosure that currently exists for variable rate demand obligations.

- *Timing of Listed Event Notices.* Currently, notice of the occurrence of a listed event must be filed "in a timely manner." The proposed amendments would require that the notice be filed within ten business days of the occurrence of the event.
- *Existing Listed Events: Materiality No Longer Relevant.* The Rule currently requires that notice be given of the occurrence of any of 11 listed events, provided that notice be made only if the event is "material."[1] The proposed Rule removes the materiality determination for the following events.
    - Failure to pay principal and interest.
    - Unscheduled payments from a debt service reserve fund that reflects financial difficulties.
    - Unscheduled payments by parties providing support for the bonds, reflecting financial difficulties.
    - Change in the identity of parties providing credit or liquidity support for the bonds.
    - Failure of a credit or liquidity provider to perform.
    - Defeasance.
    - Rating changes.
- *Modification of Existing Listed Event: Tax Matters.* Currently, notice of an adverse tax opinion or occurrence of an event affecting the tax-exempt status of the security must be given in a timely matter. The proposed amendment

[1] Note that the total number of bullet points exceeds 11; we have broken up the description of listed events when more than one "event" is combined with others for descriptive purposes within the Rule.

would expand and perhaps clarify the sort of event that would trigger a notice to include "adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the securities, or other events affecting the tax-exempt status of the security." The materiality determination apparently would only apply to notices or determinations other than those described above, including IRS audits, although in its proposed rule-making, the SEC has asked for comment as to whether IRS audits should be a listed event, regardless of materiality.

- *Existing Listed Events: Materiality Determination Permitted.* Notice is currently required of the occurrence of the following events, if material. That materiality parameter will remain.

    - Non-payment related defaults.
    - Modifications to the rights of security holders.
    - Redemptions.
    - Release, substitution or sale of property security repayment of the securities.

- *New Listed Events: Materiality Not Relevant.* The Rule adds four events, disclosure of two of which would be required regardless of materiality:

    - Tender offers.
    - Bankruptcy, insolvency, receivership or a similar proceeding by an obligated person.

- *New Listed Events: Materiality Determination Permitted.* Two new events will require a notice be filed, if the event is considered material:

    - Consummation of a merger, consolidation, acquisitions, or the sale of all or substantially all the assets of the obligated person, or the entry into a definitive agreement to engage in such a transaction, or a termination of such an agreement, other than in accordance with its terms.
    - Appointment of a successor or additional trustee, or the change in the name of the trustee.

- *No Exemption for VRDB's.* Currently, bonds with authorized denominations of $100,000 or more that may be tendered at the option of the holder at least as frequently as every nine months are exempted from Rule 15c2-12. The amendments to the Rule will eliminate the exemption from the continuing disclose requirements of the Rule for bonds issued or, in some cases, converted and remarketed, after the effective date, as more fully described below.

Some Considerations Regarding the Effects of the Proposed Amendments.

Any significant changes to federal securities laws have both intended and unintended practical consequences, including the following.

- The proposed revisions would apply to bonds issued after the effective date of the amendments. However, under the proposed amendments, conversions of existing bonds that are currently exempt from the Rule (such as variable rate demand bonds) will cause those existing bonds to become subject to the continuing disclosure requirements of the amended Rule if the conversion constitutes a "primary offering," as currently defined in the Rule. This would require a borrower to enter into a new continuing disclosure agreement or amend an existing continuing disclosure agreement.
- As the amendment is currently drafted, the ten-business day time frame to provide notice starts ticking on the day the listed event occurred, not the day on which the issuer or borrower received notice or became aware of the occurrence of the event. Borrowers and issuers do not necessarily control the flow of information necessary to support the obligation to provide notice of all listed events within the proposed ten-business day time frame. Examples include the failure of a liquidity facility provider to perform if the borrower has assigned to the tender agent or the trustee the right to draw on that facility directly to fund puts, the change in the identity or name of the trustee, or rating changes, particularly if those rating changes are predicated on a downgrade of the ratings of the credit or liquidity facility provider rather than on the issuer's or borrower's own rating. Borrowers and issuers will need to consider adding notice covenants to their bond documents to provide for proper and timely flow of relevant information to the borrower or the issuer and will need to work carefully with their investment bankers or financial advisors to stay informed about rating changes.
- In certain industries, such as not for profit health care, expansion, contraction, mergers, consolidations, acquisitions and property sales are expected to continue. For the health care industry, these trends can be expected to intensify as health care reform takes hold. Borrowers and issuers will be required to provide continuing disclosure notice of a definitive agreement to engage in these transactions, if material, necessitating a thoughtful and comprehensive understanding of the concepts of materiality.
- Serious debate has already commenced about the propriety and necessity of expanding the tax event notice provisions. To some extent, the removal of the materiality determination pertaining to adverse tax events eliminates the difficult decision borrowers and issuers addressed when attempting to understand the scope and potential effects of audits and IRS notice and whether to inform investors of their occurrence. However, certain tax professionals have publicly questioned whether the expansion of triggering events will be helpful and informative to investors.

POST ISSUANCE COMPLIANCE CHECKLIST



National Association *of* Bond Lawyers

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TRANSACTION PARTIES Overall Responsible Office for Debt Management Activities _____ Bond Counsel _____ Trustee _____ Paying Agent _____ Rebate Specialist _____ Other: Other: Other:		
A. TAX LAW REQUIREMENTS	**Document Reference**	**Responsibility**
1 **General Matters**.		
(a) Proof of filing Form 8038, 8038-G or 8038-GC. Copies of Form 8038, etc., to State authorities as required by State procedures.		
(b) —Significant modification to bond documents results in reissuance under Treas. Reg. § 1.1001- 3. Proof of filing new Form 8038, etc., plus final rebate calculation on pre-modificationbonds.		
2 **Use of Proceeds: Governmental Bonds or Qualified 501(c)(3) Bonds**.		
(a) No private business use arrangement with private entity (includes federal government) beyond permitted *de minimis* amount unless cured by remedial action under Treas. Reg. § 1.141 -12.		
(i) Sale of facilities.		
(ii) Lease.		

(iii) Nonqualified management contract. Rev. Proc. 97-13.		
(iv) Nonqualified research contract. Rev. Proc. 97-14.		
(v) —Special legal entitlement.		

(b) Additional requirements for qualified 501(c)(3) bonds.		
(i) No unrelated business activity income in facility beyond permitted *de minimis* amount.		
(ii) No activities jeopardizing 501(c)(3) exemption of 501(c)(3) borrower.		
(c) Remedial action may consist generally of redemption or defeasance of bonds (with notice of defeasance to IRS). Where disposition is a cash sale, remedial action may be an alternative qualifying use of proceeds. If bonds are 501 (c)(3) bonds, alternative use must have —TEFRA hearing and elected official approval prior to sale of original facilities. Proof of filing new Form 8038, etc.		
3. **Private Activity Bonds**. **IRC §142.**		
(a) Exempt facilities—in general.		
(i) Continuing use of exempt facilities in accord with basis of tax exemption.		
(ii) Use excess proceeds for redemption or defeasance (with notice of defeasance to IRS) within 90 days of determination that proceeds will not be spent, or date financed facility is placed in service. Treas. Reg. § 1.142-2(c).		
(b) Residential rental project bonds.		
(i) Meet low-income requirements for qualified project period. IRC §142(d).		
(ii) Proof of filing annual reports of compliance by project operator on Form 8703.		
(c) Qualified mortgage bonds.		
(i) Good faith compliance efforts for mortgage eligibility. IRC §143(a)(2).		
(ii) Spend proceeds or redeem bonds within 42 months of issuance; use mortgage prepayments after first 10 years to redeem bonds at next semiannual debt service date after receipt.		

(iii) Proof of filing annual reports of mortgagor income due 8/15. Treas. Reg. § 1. 103A-2(k)(2)(ii).		
(d) Small issue manufacturing bonds using $10,000,000 ($20,000,000 for 2007) capital expenditure limit: monitor capital expenditures during three years after issuance for compliance with limit. IRC § 144(a).		
(e) Acquisition of existing facilities: make qualifying rehabilitation within 24 months unless covered by exceptions. IRC § 147(d).		
4. **Arbitrage**.		
(a) Rebate. IRC §148(f).		
(i) First installment of arbitrage rebate due on fifth anniversary of bond issuance plus 60 days.		
(ii) Succeeding installments every five years.		
(iii) Final installment 60 days after retirement of last bonds of issue.		
(iv) Monitor expenditures prior to semi-annual target dates for six-month, 18-month, or 24-month spending exception.		
(b) Monitor expenditures generally against date of issuance expectations for three-year or five-year temporary periods or five-year hedge bond rules.		
(c) For advance refunding escrows, confirm that any scheduled purchases of 0% Securities of State and Local Government Series are made on scheduled date.		
5. **Special Rules for Pool Bonds**.		
(a) Redeem bonds at one-year and three-year expenditure target dates. Pay 95% of costs of issuance within 180 days. IRC §149(f), as amended 2006.		
(b) 501(c)(3) pools: redeem bonds at one-year expenditure target date. IRC § 147(b)(4).		
6. **Record Retention**.		

(a) Maintain general records relating to issue for life of issue plus any refunding plus three years.		
(b) Maintain special records required by safe harbor for investment contracts or defeasance escrows. Treas. Reg. § 1.148-5.		
(c) Maintain record of identification on issuer's books and records of ―qualified hedge contract. Treas. Reg. § 1.148-4(h)(2)(viii) and § 1.148-1 1A(i)(3).		
(d) Maintain record of election not to take depreciation on leased property that must be treated as owned by a governmental unit. Treas. Reg. § 1.103(n)-2T Q/A7.		
(e) Maintain record of agreements and assignments between governmental units that affect volume cap allocations under IRC §146. Treas. Reg. § 1.103(n)-3T Q/A8, 13 & 14.		
(f) Maintain record of election to utilize the $10,000,000 small issue bond limit on the books and records of the issuer. Treas. Reg. § 1.103-10(b)(2)(vi).		
7. **Allocations of Bond Proceeds to Expenditures**. Make any allocations of bond proceeds to expenditures needed under Treas. Reg. § 1.148-6(d) and § 1.141-6(a) by 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than the earlier of five years after the bonds were issued or 60 days after the issue is retired.		
B. DISCLOSURE REQUIREMENTS		
1. **SEC Rule 15c2-12 Requirements**.		
(a) Determine applicability of continuing disclosure undertaking (―CDU).		
(b) Identification of ―obligated person for purposes of Rule 15c2-12. Governmental Bonds: Issuer. Private Activity Bonds: Issuer or Borrower.		
(c) Name of Dissemination Agent, if applicable.		
(d) Periodically determine that required CDU filings have been prepared, sent to and received by NRMSIR's.		

(e) Information required to be provided to NRMSIR and SID:		
(i) Annual Reports.		
(1) Quantitative financial information and operating data disclosed in official statement.		
(2) Audited financial statements.		
(ii) Other information.		
(1) Change of fiscal year.		
(2) Other information specified in CDU.		
(f) Material Event Disclosure. Notification by obligated person to SID and each NRMSIR, in timely manner, of any following events with respect to bonds, if event is material within the meaning of the federal securities laws:		
(i) Principal and interest payment delinquencies.		
(ii) Non-payment related defaults.		
(iii) Unscheduled draws on debt service reserves reflecting financial difficulties.		
(iv) Unscheduled draws on credit enhancements reflecting financial difficulties.		
(v) Substitution of credit or liquidity providers, or their failure to perform.		
(vi) Adverse tax opinions or events affecting the tax-exempt status of the bonds.		
(vii) Modifications to rights of holders of the bonds.		
(viii) Bond calls.		
(ix) Defeasances.		
(x) Release, substitution or sale of property securing repayment of the bonds.		

(xi) Rating changes.		
(g) Failure of the obligated person to timely file financial information (including audited financial statements) and operating data with SID and either each NRMSIR or MSRB.		
2. **Notification to Underwriters of Bonds**. Determination of whether bond purchase agreement requires issuer of the bonds to notify underwriters for a specified period of time of any fact of event that might cause the official statement to contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading.		
3. **Information Required to be Filed with Other Entities**.		
(a) Trustee.		
(b) Rating Agency(ies).		
(c) Bond Insurer.		
(d) Credit Enhancer.		
Examples: (i) Financial records.		
(1) Annual.		
(2) Quarterly.		
(ii) Budgets.		
(iii) Issuance of additional bonds.		
(iv) Events of default.		
(v) Notices of redemption.		
(vi) Amendments to bond documents.		
4. **Local Disclosure**. State and/or local requirements.		

C MISCELLANEOUS STATE LAW AND DOCUMENT REQUIREMENTS		
1. **Security**.		
(a) Proof of filing UCC statements with appropriate authorities as required by State procedures.		
(i) Initial UCC financing statements filed with appropriate authorities. UCC 9-5 15(a).		
(ii) Continuation statements filed by fifth anniversary. UCC 9-515(d).		
(iii) Transfer by government or governmental unit not requiring a UCC statement. UCC 9-102(a)(45) (UCC exception adopted in certain jurisdictions).		
(iv) Public finance transaction in connection with debt securities (all or portion of securities have initial stated maturity of 20 years; obligated party is State or State governmental unit) qualifies for 30-year filing. UCC 9-515(b)		
(v) Other local requirements or exceptions.		
(b) Proof of filing recorded mortgages, deeds of trust with appropriate authorities and proof of delivery of originals to trustee or custodian.		
2. **Insurance**.		
(a) Proof of receipt of final title policy and proof of delivery to trustee or custodian.		
(b) Monitor compliance with property and casualty insurance requirements.		
3. **Financial Covenants**. Monitor compliance with rate covenant or other covenants not included in B(3) above.		
4. **Transfer of Property**.		
(a) Restrictions on transfer of cash.		
(b) Restrictions on releases of property.		
(c) Restrictions on granting liens or encumbering property.		

5.	**Investments**. Compliance with permitted investments.		
6.	**Derivatives**. Entering into and ongoing compliance of derivatives contracts is complex and a universe in and of itself. GFOA has created a Derivatives Checklist and a Recommended Practice on the Use of Debt-Related Derivatives Products and the Development of a Derivatives Policy to assist issuers with understanding these products. These documents can be found at: http://gfoa.org/services/rp/debt.shtml.		

DISCLOSURE DISSEMINATION AGENT AGREEMENT

This Disclosure Dissemination Agent Agreement (the "Disclosure Agreement"), dated as of _____, 20__, is executed and delivered by The City of _____, _____ (the "City") and _____, as exclusive Disclosure Dissemination Agent (the "Disclosure Dissemination Agent" or "___") for the benefit of the Holders (hereinafter defined) of the Bonds (hereinafter defined) and in order to provide certain continuing disclosure with respect to the Bonds in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time (the "Rule").

SECTION 1. Definitions. Capitalized terms not otherwise defined in this Disclosure Agreement shall have the meaning assigned in the Rule or, to the extent not in conflict with the Rule, in the Official Statement (hereinafter defined). The capitalized terms shall have the following meanings:

"Annual Report" means an Annual Report described in and consistent with Section 3 of this Disclosure Agreement.

"Annual Filing Date" means the date, set in Sections 2(a) and 2(f), by which the Annual Report is to be filed with the Repositories.

"Annual Financial Information" means annual financial information as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 3(a) of this Disclosure Agreement.

"Audited Financial Statements" means the financial statements (if any) of the City for the prior fiscal year, certified by an independent auditor as prepared in accordance with generally accepted accounting principles or otherwise, as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 3(b) of this Disclosure Agreement.

"Bonds" means the bonds as listed on the attached Exhibit A, with the 9-digit CUSIP numbers relating thereto.

"Certification" means a written certification of compliance signed by the Disclosure Representative stating that the Annual Report, Audited Financial Statements, Voluntary Report or Notice Event notice delivered to the Disclosure Dissemination Agent is the Annual Report, Audited Financial Statements, Voluntary Report or Notice Event notice required to be submitted to the Repositories under this Disclosure Agreement. A Certification shall accompany each such document submitted to the Disclosure Dissemination Agent by the City and include the full name of the Bonds and the 9-digit CUSIP numbers for all Bonds to which the document applies.

"Disclosure Representative" means Finance Director or her designee, or such other person as the City shall designate in writing to the Disclosure Dissemination Agent from time to time as the person responsible for providing Information to the Disclosure Dissemination Agent.

"Disclosure Dissemination Agent" means _____, acting in its capacity as Disclosure Dissemination Agent hereunder, or any successor Disclosure Dissemination Agent designated in writing by the City pursuant to Section 9 hereof.

"EMMA" means the MSRB's Electronic Municipal Market Access system authorized by the SEC

in accordance with the Rule. Further information regarding EMMA can be retrieved by visiting the web site "*http://emma.msrb.org/*

"Holder" means any person (a) having the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries) or (b) treated as the owner of any Bonds for federal income tax purposes.

"Information" means the Annual Financial Information, the Audited Financial Statements (if any) the Notice Event notices, and the Voluntary Reports.

"Notice Event" means an event listed in Sections 4(a) of this Disclosure Agreement.

"MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934.

"Official Statement" means that Official Statement prepared by the City in connection with the Bonds, as listed on Appendix A.

"Repository" means EMMA .

"Voluntary Report" means the information provided to the Disclosure Dissemination Agent by the City pursuant to Section 7.

SECTION 2. Provision of Annual Reports.

(a) The City shall provide, annually, an electronic copy of the Annual Report and Certification to the Disclosure Dissemination Agent, together with a copy for the Paying Agent, not later than 30 days prior to the Annual Filing Date. Promptly upon receipt of an electronic copy of the Annual Report and the Certification, the Disclosure Dissemination Agent shall provide an Annual Report to EMMA and the State Depository (if any) not later than not later than June 30th of each year, commencing with the fiscal year ending September 30, 200_. Such date and each anniversary thereof is the Annual Filing Date. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 3 of this Disclosure Agreement.

(b) If on the fifteenth (15th) day prior to the Annual Filing Date, the Disclosure Dissemination Agent has not received a copy of the Annual Report and Certification, the Disclosure Dissemination Agent shall contact the Disclosure Representative by telephone and in writing (which may be by e-mail) to remind the City of its undertaking to provide the Annual Report pursuant to Section 2(a). Upon such reminder, the Disclosure Representative shall either (i) provide the Disclosure Dissemination Agent with an electronic copy of the Annual Report and the Certification) no later than two (2) business days prior to the Annual Filing Date, or (ii) instruct the Disclosure Dissemination Agent in writing that the City will not be able to file the Annual Report within the time required under this Disclosure Agreement, state the date by which the Annual Report for such year will be provided and instruct the Disclosure Dissemination Agent that a Notice Event as described in Section 4(a)(12) has occurred and to immediately send a notice to EMMA in substantially the form attached as Exhibit B.

(c) If the Disclosure Dissemination Agent has not received an Annual Report and Certification by 12:00 noon on the first business day following the Annual Filing Date for the Annual Report, a Notice Event described in Section 4(a)(12) shall have occurred and the City irrevocably directs the Disclosure Dissemination Agent to immediately send a notice to EMMA in substantially the form attached as Exhibit B.

(d) If Audited Financial Statements of the City are prepared but not available prior to the Annual Filing Date, the City shall, when the Audited Financial Statements are available, provide in a timely manner an electronic copy to the Disclosure Dissemination Agent, accompanied by a Certificate, for filing with EMMA.

(e) The Disclosure Dissemination Agent shall:

(i) determine the name and address of each Repository each year prior to the Annual Filing Date;

(ii) upon receipt, promptly file each Annual Report received under Section 2(a) with EMMA;

(iii) upon receipt, promptly file each Audited Financial Statement received under Section 2(d) with EMMA;

(iv) upon receipt, promptly file the text of each disclosure to be made with EMMA together with a completed copy of the MSRB Material Event Notice Cover Sheet in the form attached as Exhibit C, describing the event by checking the box indicated below when filing pursuant to the Section of this Disclosure Agreement indicated:

1. "Principal and interest payment delinquencies," pursuant to Sections 4(c) and 4(a)(1);

2. "Non-Payment related defaults," pursuant to Sections 4(c) and 4(a)(2);

3. "Unscheduled draws on debt service reserves reflecting financial difficulties," pursuant to Sections 4(c) and 4(a)(3);

4. "Unscheduled draws on credit enhancements reflecting financial difficulties," pursuant to Sections 4(c) and 4(a)(4);

5. "Substitution of credit or liquidity providers, or their failure to perform," pursuant to Sections 4(c) and 4(a)(5);

6. "Adverse tax opinions or events affecting the tax-exempt status of the security," pursuant to Sections 4(c) and 4(a)(6);

7. "Modifications to rights of securities holders," pursuant to Sections 4(c) and 4(a)(7);

8. "Bond calls," pursuant to Sections 4(c) and 4(a)(8);

9. "Defeasances," pursuant to Sections 4(c) and 4(a)(9);

10. "Release, substitution, or sale of property securing repayment of the securities," pursuant to Sections 4(c) and 4(a)(10);

11. "Ratings changes," pursuant to Sections 4(c) and 4(a)(11);

12. "Failure to provide annual financial information as required," pursuant to Section 2(b)(ii) or Section 2(c), together with a completed copy of Exhibit B to this Disclosure Agreement;

13. "Other material event notice (specify)," pursuant to Section 7 of this Agreement, together with the summary description provided by the Disclosure Representative; and

(v) provide the City evidence of the filings of each of the above when made, which shall be by means of the ___ system, for so long as ___ is the Disclosure Dissemination Agent under this Disclosure Agreement.

(f) The City may adjust the Annual Filing Date upon change of its fiscal year by providing written notice of such change and the new Annual Filing Date to the Disclosure Dissemination Agent and the Repositories, provided that the period between the existing Annual Filing Date and new Annual Filing Date shall not exceed one year.

SECTION 3. Content of Annual Reports.

(a) Each Annual Report shall contain Annual Financial Information with respect to the City, including the information provided in the Official Statement under the headings:

(i) The City of _____, _____ Property Tax Rates
(ii) The City of _____, _____ Millage for Voted Debt Service
(iii) The City of _____, _____ Net Assessed Value and Estimated Actual Value of Taxable Property
(iv) The City of _____, _____ Property Tax Levies and Collections
(v) Ten Largest Tax Assessments
(vi) Summary Schedule of Revenues, Expenditures and Net Changes in Fund Balance for the General Fund
(vii) Direct Debt
(viii) Overlapping Debt
(ix) Debt Ratios
(x) Appendix B - The City of _____, _____ Schedule of Principal & Interest for Non-Ad Valorem Revenue Bonds and Loans
(xi) Appendix B - The City of _____, _____ Legally Available Non-Ad Valorem Funds
(xii) Appendix B - The City of _____, _____ Historical Anti-Dilution Test

(b) Audited Financial Statements prepared in accordance with generally accepted accounting principles ("GAAP") will be included in the Annual Report; provided, however, if the audited financial statements of the City are not completed prior to June 30th of any year, the City shall provide unaudited financial statements on such date and shall provide the audited financial statements as soon as practicable following their completion. Audited Financial Statements (if any) will be provided pursuant to Section 2(d).

Any or all of the items listed above may be included by specific reference from other documents, including official statements of debt issues with respect to which the City is an "obligated person" (as defined by the Rule), which have been previously filed with each of the National Repositories or the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The City will clearly identify each such document so incorporated by reference.

SECTION 4. Reporting of Notice Events.

(a) The occurrence of any of the following events, if material, with respect to the Bonds constitutes a Notice Event:

1. Principal and interest payment delinquencies;

2. Non-payment related defaults;

3. Unscheduled draws on debt service reserves reflecting financial difficulties;

4. Unscheduled draws on credit enhancements relating to the Bonds reflecting financial difficulties;

5. Substitution of credit or liquidity providers, or their failure to perform;

6. Adverse tax opinions or events affecting the tax-exempt status of the Bonds;

7. Modifications to rights of Bond holders;

8. Bond calls;

9. Defeasances;

10. Release, substitution, or sale of property securing repayment of the Bonds;

11. Rating changes on the Bonds;

12. Failure to provide annual financial information as required;

The City shall promptly notify the Disclosure Dissemination Agent in writing upon the occurrence of a Notice Event. Such notice shall instruct the Disclosure Dissemination Agent to report the occurrence pursuant to subsection (c). Such notice shall be accompanied with the text of the disclosure that the City desires to make, the written authorization of the City for the Disclosure Dissemination

Agent to disseminate such information, and the date the City desires for the Disclosure Dissemination Agent to disseminate the information.

(b) The Disclosure Dissemination Agent is under no obligation to notify the City or the Disclosure Representative of an event that may constitute a Notice Event. In the event the Disclosure Dissemination Agent so notifies the Disclosure Representative, the Disclosure Representative will within five business days of receipt of such notice, instruct the Disclosure Dissemination Agent that (i) a Notice Event has not occurred and no filing is to be made or (ii) a Notice Event has occurred and the Disclosure Dissemination Agent is to report the occurrence pursuant to subsection (c), together with the text of the disclosure that the City desires to make, the written authorization of the City for the Disclosure Dissemination Agent to disseminate such information, and the date the City desires for the Disclosure Dissemination Agent to disseminate the information.

(c) If the Disclosure Dissemination Agent has been instructed by the City as prescribed in subsection (a) or (b)(ii) of this Section 4 to report the occurrence of a Notice Event, the Disclosure Dissemination Agent shall promptly file a notice of such occurrence with EMMA.

SECTION 5. CUSIP Numbers. Whenever providing information to the Disclosure Dissemination Agent, including but not limited to Annual Reports, documents incorporated by reference to the Annual Reports, Audited Financial Statements, notices of Notice Events, and Voluntary Reports filed pursuant to Section 7(a), the City shall indicate the full name of the Bonds and the 9-digit CUSIP numbers for the Bonds as to which the provided information relates.

SECTION 6. Additional Disclosure Obligations. The City acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the City, and that the failure of the Disclosure Dissemination Agent to so advise the City shall not constitute a breach by the Disclosure Dissemination Agent of any of its duties and responsibilities under this Disclosure Agreement. The City acknowledges and understands that the duties of the Disclosure Dissemination Agent relate exclusively to execution of the mechanical tasks of disseminating information as described in this Disclosure Agreement.

SECTION 7. Voluntary Reports.

(a) The City may instruct the Disclosure Dissemination Agent to file information with the Repositories, from time to time pursuant to a Certification of the Disclosure Representative accompanying such information (a "Voluntary Report").

(b) Nothing in this Disclosure Agreement shall be deemed to prevent the City from disseminating any other information through the Disclosure Dissemination Agent using the means of dissemination set forth in this Disclosure Agreement or including any other information in any Annual Report, Annual Financial Statement, Voluntary Report or Notice Event notice, in addition to that required by this Disclosure Agreement. If the City chooses to include any information in any Annual Report, Annual Financial Statement, Voluntary Report or Notice Event notice in addition to that which is specifically required by this Disclosure Agreement, the City shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report, Annual

Financial Statement, Voluntary Report or Notice Event notice.

SECTION 8. Termination of Reporting Obligation. The obligations of the City and the Disclosure Dissemination Agent under this Disclosure Agreement shall terminate with respect to an issue of the Bonds upon the legal defeasance, prior redemption or payment in full of all of the Bonds of such issue, when the City is no longer an obligated person with respect to the Bonds, or upon delivery by the Disclosure Representative to the Disclosure Dissemination Agent of an opinion of nationally recognized bond counsel to the effect that continuing disclosure is no longer required.

SECTION 9. Disclosure Dissemination Agent. The City has appointed _____ as exclusive Disclosure Dissemination Agent under this Disclosure Agreement. The City may, upon thirty days written notice to the Disclosure Dissemination Agent and the Trustee, replace or appoint a successor Disclosure Dissemination Agent. Upon termination of ___'s services as Disclosure Dissemination Agent, whether by notice of the City or ___, the City agrees to appoint a successor Disclosure Dissemination Agent or, alternately, agrees to assume all responsibilities of Disclosure Dissemination Agent under this Disclosure Agreement for the benefit of the Holders of the Bonds. Notwithstanding any replacement or appointment of a successor, the City shall remain liable until payment in full for any and all sums owed and payable to the Disclosure Dissemination Agent. The Disclosure Dissemination Agent may resign at any time by providing thirty days' prior written notice to the City.

SECTION 10. Remedies in Event of Default. In the event of a failure of the City or the Disclosure Dissemination Agent to comply with any provision of this Disclosure Agreement, the Holders' rights to enforce the provisions of this Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel performance of the parties' obligation under this Disclosure Agreement. Any failure by a party to perform in accordance with this Disclosure Agreement shall not constitute a default on the Bonds or under any other document relating to the Bonds, and all rights and remedies shall be limited to those expressly stated herein.

SECTION 11. Duties, Immunities and Liabilities of Disclosure Dissemination Agent.

(a) The Disclosure Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement. The Disclosure Dissemination Agent's obligation to deliver the information at the times and with the contents described herein shall be limited to the extent the City has provided such information to the Disclosure Dissemination Agent as required by this Disclosure Agreement. The Disclosure Dissemination Agent shall have no duty with respect to the content of any disclosures or notice made pursuant to the terms hereof. The Disclosure Dissemination Agent shall have no duty or obligation to review or verify any Information or any other information, disclosures or notices provided to it by the City and shall not be deemed to be acting in any fiduciary capacity for the City, the Holders of the Bonds or any other party. The Disclosure Dissemination Agent shall have no responsibility for the City's failure to report to the Disclosure Dissemination Agent a Notice Event or a duty to determine the materiality thereof. The Disclosure Dissemination Agent shall have no duty to determine, or liability for failing to determine, whether the City has complied with this Disclosure Agreement. The Disclosure Dissemination Agent may conclusively rely upon certifications of the City at all times.

THE CITY AGREES TO INDEMNIFY AND SAVE THE DISCLOSURE DISSEMINATION AGENT AND ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, HARMLESS

AGAINST ANY LOSS, EXPENSE AND LIABILITIES WHICH THEY MAY INCUR ARISING OUT OF OR IN THE EXERCISE OR PERFORMANCE OF THEIR POWERS AND DUTIES HEREUNDER, INCLUDING THE COSTS AND EXPENSES (INCLUDING ATTORNEYS FEES) OF DEFENDING AGAINST ANY CLAIM OF LIABILITY, BUT EXCLUDING LIABILITIES DUE TO THE DISCLOSURE DISSEMINATION AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

The obligations of the City under this Section shall survive resignation or removal of the Disclosure Dissemination Agent and defeasance, redemption or payment of the Bonds.

(b) The Disclosure Dissemination Agent may, from time to time, consult with legal counsel (either in-house or external) of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or its respective duties hereunder, and neither of them shall incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel. The fees and expenses of such counsel shall be payable by the City.

SECTION 12. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the City and the Disclosure Dissemination Agent may amend this Disclosure Agreement and any provision of this Disclosure Agreement may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to both the City and the Disclosure Dissemination Agent to the effect that such amendment or waiver does not materially impair the interests of Holders of the Bonds and would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule; provided neither the City or the Disclosure Dissemination Agent shall be obligated to agree to any amendment modifying their respective duties or obligations without their consent thereto.

Notwithstanding the preceding paragraph, the Disclosure Dissemination Agent shall have the right to adopt amendments to this Disclosure Agreement necessary to comply with modifications to and interpretations of the provisions of the Rule as announced by the Securities and Exchange Commission from time to time by giving not less than 20 days written notice of the intent to do so together with a copy of the proposed amendment to the City. No such amendment shall become effective if the City shall, within 10 days following the giving of such notice, send a notice to the Disclosure Dissemination Agent in writing that it objects to such amendment.

SECTION 13. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the City, the Disclosure Dissemination Agent, the underwriter, and the Holders from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 14. Governing Law. This Disclosure Agreement shall be governed by the laws of the State of _____ (other than with respect to conflicts of laws).

SECTION 15. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The Disclosure Dissemination Agent and the City have caused this Continuing Disclosure Agreement to be executed, on the date first written above, by their respective officers duly authorized.

_____, as Disclosure Dissemination Agent

By:_____
Name:_____
Title:_____

THE CITY OF _____, _____,
as City

By:_____
Name:_____
Title:_____

EXHIBIT A
NAME AND CUSIP NUMBERS OF BONDS

Name of City The City of _____, _____

Obligated Person(s) The City of _____, _____

Name of Bond Issue: _____ Bonds, Series 20__

Date of Issuance: _____

Date of Official Statement _____

CUSIP Number:	
CUSIP Number:	
CUSIP Number:	
CUSIP Number:	
CUSIP Number:	
CUSIP Number:	
CUSIP Number:	

EXHIBIT B

NOTICE TO EMMA OF FAILURE TO FILE ANNUAL REPORT

City: The City of _____, _____

Obligated Person: The City of _____, _____

Name of Bond Issue: _____ Bonds, Series 20__

Date of Issuance: _____, 20__

NOTICE IS HEREBY GIVEN that the City has not provided an Annual Report with respect to the above-named Bonds as required by the Disclosure Agreement, dated as of _____, between the City and _____, as Disclosure Dissemination Agent. The City has notified the Disclosure Dissemination Agent that it anticipates that the Annual Report will be filed by _____.

Dated: _____

_____, as Disclosure Dissemination Agent, on behalf of the City

_____

cc: City
Obligated Person

EXHIBIT C

MATERIAL EVENT NOTICE COVER SHEET

This cover sheet and material event notice should be sent to EMMA pursuant to Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C) and (D).

Issuer's and/or Other Obligated Person's Name:

.....

Issuer's Six-Digit CUSIP Number:

.....

or Nine-Digit CUSIP Number(s) of the bonds to which this material event notice relates:

.....

Number of pages of attached material event notice:

Description of Material Events Notice (Check One):

1. ___Principal and interest payment delinquencies
2. ___Non-Payment related defaults
3. ___Unscheduled draws on debt service reserves reflecting financial difficulties
4. ___Unscheduled draws on credit enhancements reflecting financial difficulties
5. ___Substitution of credit or liquidity providers, or their failure to perform
6. ___Adverse tax opinions or events affecting the tax-exempt status of the security
7. ___Modifications to rights of securities holders
8. ___Bond calls
9. ___Defeasances
10. ___Release, substitution, or sale of property securing repayment of the securities
11. ___Rating changes
12. ___Failure to provide annual financial information as required
13. ___Other material event notice (specify)

_____

I hereby represent that I am authorized by the issuer or its agent to distribute this information publicly:

Signature:

Name:

Title:

Employer:

Address:

City, State, Zip Code:

Voice Telephone Number:

CONTINUING DISCLOSURE COMMITMENT

This Continuing Disclosure Commitment (this "Disclosure Commitment") is executed and delivered by the City of _____, _____ (the "City") in connection with the issuance of its $_____ Bonds, the "Series 20__ Bonds"). The Series 20__ Bonds are being issued pursuant _____ … (collectively, the "Covenant Ordinance"). The City covenants and agrees as follows:

SECTION 1. PURPOSE OF DISCLOSURE COMMITMENT. This Disclosure Commitment is being executed and delivered by the City for the benefit of the Series 20__ Bondholders (as defined herein) and in order to assist the original Underwriters of the Series 20__ Bonds in complying with Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission ("SEC") pursuant to the Securities Exchange Act of 1934 (the "Rule").

The provisions of this Disclosure Commitment are supplemental and in addition to the provisions of the Covenant Ordinance with respect to reports, filings and notifications provided for therein, and do not in any way relieve the City or any other person of any covenant, agreement or obligation under the Covenant Ordinance (or remove any of the benefits thereof) nor shall anything herein prohibit the City or any other person from making any reports, filings or notifications required under the Covenant Ordinance or any applicable law.

SECTION 2. PROVISION OF ANNUAL REPORT. Except as otherwise provided herein, the City shall provide to the Electronic Municipal Market Access system described in Section 6 hereof (the "EMMA"), on or before April 30 of each year, commencing April 30, 20__, the Annual Report described in Section 3 below. Notwithstanding the immediately preceding sentence, to the extent any information in the Annual Report does not become available to the City before April 30 of any year, the City shall provide, or cause to be provided, such information when it becomes available, but no later than one year following the end of the Fiscal Year (as defined herein). In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 3 of this Disclosure Commitment; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report.

SECTION 3. CONTENT OF ANNUAL REPORT. The City's Annual Report shall contain or incorporate by reference the following:

(A) The City's Comprehensive Annual Financial Report for the immediately preceding Fiscal Year (the "CAFR"), which shall include the audited financial statements of the City for the immediately preceding Fiscal Year; provided, however, if the audited financial statements of the City are not completed prior to April 30 of any year, the City shall provide unaudited financial statements on such date and shall provide the audited financial statements as soon as practicable following their completion; and

(B) To the extent not set forth in the CAFR, the following additional financial information and operating data relating to the City's Covenant Revenues, as defined in the final Official Statement of the City dated as of August 27, 20__ related to the Series 20__ Bonds (the "Official Statement"):

(1) Updates of information in the Official Statement relating to:

(a) The issuance of additional indebtedness payable from and secured by the Covenant Revenues, unless such Covenant Revenues are no longer pledged to the payment of the Series 20__ Bonds;

(b) General Fund Statements of Revenues, Expenditures and Changes in Fund Balance;

(c) Utilities Services Tax collections and Communication Services Tax collections; and

(d) Tables entitled "Stabilization Reserve Account Requirement Historical Perspective" and "Calculation of Covenant Revenues and Anti-Dilution Test Limitation."

(2) Description of any material litigation or contingent liabilities which would have been disclosed in the Official Statement if such litigation or contingent liability existed as of the date of the Official Statement; and

(3) Such additional information as may be required by the Rule.

To the extent any of the items set forth in subsections (1) through (3) above are included in the CAFR, they do not have to be separately set forth. Any or all of the items listed above may be incorporated by reference from other documents as provided under Section 8 hereof.

(C) The City reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the City; provided that the City agrees that any such modification will be done in a manner consistent with the Rule.

(D) The financial statements provided by the City shall be audited and prepared in accordance with Generally Accepted Accounting Principles ("GAAP"), as modified by applicable State of Florida requirements and the governmental accounting standards promulgated by the Government Accounting Standards Board.

For purposes of this Disclosure Commitment, "Fiscal Year" means the period commencing on October 1 and ending on September 30 of the next succeeding year, or such other period of time provided by applicable law.

SECTION 4. REPORTING SIGNIFICANT EVENTS. The City shall provide to the EMMA on a timely basis, notice of any of the following events, if such event is material with respect to the Series 20__ Bonds or the City's ability to satisfy its payment obligations with respect to the Series 20__ Bonds:

(A) Principal and interest payment delinquencies;

(B) Non-payment related defaults;

(C) Unscheduled draws on the debt service reserve fund reflecting financial difficulties;

(D) Unscheduled draws on credit enhancement reflecting financial difficulties;

(E) Substitution of credit or liquidity providers, or their failure to perform;

(F) Adverse tax opinions with respect to or events affecting the tax-exempt status of the Series 20__ Bonds;

(G) Modifications to rights of Series 20__ Bondholders;

(H) Any call of the Series 20__ Bonds for redemption (other than scheduled mandatory redemption) or any acceleration of maturity thereof;

(I) Defeasances;

(J) Release, substitution, or sale of property securing repayment of the Series 20__ Bonds;

(K) Rating changes; and

Whenever the City obtains knowledge of the occurrence of a significant event described in this Section 4, the City shall as soon as possible determine if such event would be material under applicable federal securities law to Series 20__ Bondholders, provided, that any event under clauses (D), (E), (F), or (K) above will always be deemed to be material.

SECTION 5. ADDITIONAL REPORTING. The City shall provide to the EMMA on a timely basis, notice of any failure on the part of the City or any other "obligated person" (as defined herein) to provide the Annual Report on or before the date specified in Section 2 hereof.

SECTION 6. REPOSITORIES. Information regarding the EMMA to which the City shall provide the information described in Sections 3 and 4 above, to the extent required, may be obtained by visiting the website *http://emma.msrb.org/*.

SECTION 7. NO EVENT OF DEFAULT. Notwithstanding any other provision in the Covenant Ordinance to the contrary, failure of the City to comply with the provisions of this

Disclosure Commitment shall not be considered an event of default under the Covenant Ordinance. To the extent permitted by law, the sole and exclusive remedy of any Series 20__ Bondholder for the enforcement of the provisions hereof shall be an action for mandamus or specific performance, as applicable, by court order, to cause the City to comply with its obligations hereunder. For purposes of this Disclosure Commitment, "Series 20__ Bondholder" shall mean any person who (A) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 20__ Bonds (including persons holding Series 20__ Bonds through nominees, depositories or other intermediaries), or (B) is treated as the owner of any Series 20__ Bond for federal income tax purposes.

As of the date of this Disclosure Commitment, the City has complied with all of its continuing disclosure obligations under the Rule and all of its previous continuing disclosure certifications.

SECTION 8. INCORPORATION BY REFERENCE. Any or all of the information required herein to be disclosed may be incorporated by reference from other documents, including official statements relating to debt issues of the City or related public entities, which have been submitted to the EMMA or the SEC. If the document incorporated by reference is a final official statement, it must be available from the EMMA. The City shall clearly identify each document incorporated by reference.

SECTION 9. DISSEMINATION AGENTS. The City may, from time to time, appoint or engage a dissemination agent to assist it in carrying out its obligations under this Disclosure Commitment, and may discharge any such agent, with or without appointing a successor disseminating agent. As of the date of this Disclosure Commitment, the City has not appointed a dissemination agent.

SECTION 10. TERMINATION. The City's obligations under this Disclosure Commitment shall terminate upon (A) the legal defeasance, prior redemption or payment in full of all of the Series 20__ Bonds, or (B) the termination of the continuing disclosure requirements of the Rule by legislative, judicial or administrative action.

SECTION 11. AMENDMENTS. Notwithstanding any other provision of this Disclosure Commitment, the City may amend this Disclosure Commitment and any provision may be waived, if such amendment or waiver is supported by an opinion of counsel that is nationally recognized in the area of federal securities laws, to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

In the event of any amendment or waiver of a provision of this Disclosure Commitment, the City shall describe such amendment in the Annual Report, and shall include, as applicable, a narrative explanation of the reason for such amendment or waiver and the impact of the change on the type (or, in the case of a change in accounting principles, on the presentation) of

financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements: (A) notice of such change shall be given in the same manner as for a significant event described in Section 4 hereof; and (B) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 12. ADDITIONAL INFORMATION. Nothing in this Disclosure Commitment shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Commitment or any other means of communication, or including any other information in its Annual Report described in Section 3 hereof or notice of occurrence of a significant event described in Section 4 hereof, in addition to that which is required by this Disclosure Commitment. If the City chooses to include any information in the Annual Report in addition to that which is specifically required by Section 3 hereof, the City shall have no obligation under this Disclosure Commitment to update such information or include it in any future Annual Report. The City may from time to time, in its discretion, choose to provide notice of the occurrence of certain other events, in addition to those listed in this Disclosure Commitment, if, in the judgment of the City, such other events are material with respect to the Series 20__ Bonds, but the City does not specifically undertake to commit to provide any such additional notice of the occurrence of any material event except those events listed in Section 4 hereof.

SECTION 13. SEVERABILITY. In case any section or provision of this Disclosure Commitment, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder or any application thereof, is for any reason held by a court of competent jurisdiction to be illegal or invalid, such illegality or invalidity shall not affect the remainder thereof or any other section or provision thereof or any other covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder (except to the extent that such remainder or section or provision or other covenant, stipulation, obligation, agreement, act or action, or part thereof is wholly dependent for its operation on the provision determined to be invalid), which shall be construed and enforced as if such illegal or invalid portion were not contained therein, nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

SECTION 14. OBLIGATED PERSONS. If any person, other than the City, becomes an "obligated person" relating to the Series 20__ Bonds, the City shall use its best efforts to require such "obligated person" to comply with all provisions of the Rule applicable to such "obligated person."

SECTION 15. BENEFICIARIES. This Disclosure Commitment shall inure solely to the benefit of the City, any dissemination agent appointed hereunder pursuant to Section 9 hereof, the "participating Underwriter" and the Series 20__ Bondholders, and shall create no rights in any other person or entity.

Dated: _____, 20__

CITY OF _____, _____

By:_____
_____, Mayor

By:_____
_____, Chief Financial Officer

OMB APPROVAL	
OMB Number:	3235-0045
Expires:	June 30, 2010
Estimated average burden hours per response	38

Page 1 of 26

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 08
Amendment No.

Proposed Rule Change by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☑ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☐ Section 19(b)(3)(A) ☑ Section 19(b)(3)(B) ☐

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

Rule

☑ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Interpretive guidance on disclosure and other sales practice obligations of brokers, dealers and municipal securities dealers relating to sales of municipal securities to individual and other retail investors.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name: Larry Last Name: Sandor
Title: Associate General Counsel
E-mail: lsandor@msrb.org
Telephone: (703) 797-6600 Fax: (703) 797-6700

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

Municipal Securities Rulemaking Board

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 07/14/2009

By Ronald W. Smith
(Name)

Corporate Secretary
(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Ronald Smith, rsmith@msrb.org

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "MSRB" or "Board") is hereby filing with the Securities and Exchange Commission (the "SEC" or "Commission") a proposed rule change (the "proposed rule change") consisting of interpretive guidance on disclosure and other sales practice obligations of brokers, dealers and municipal securities dealers ("dealers") relating to sales of municipal securities to individual and other retail investors. The proposed rule change is as follows:

Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities

Significant participation by individual investors has long been a hallmark of the municipal securities market and, consequently, a focus of the core investor protection efforts of the Municipal Securities Rulemaking Board (the "MSRB").[1] This Notice reminds brokers, dealers and municipal securities dealers ("dealers") of their sales practice obligations under MSRB rules as applied specifically to individual and other retail investors. Among other things, this Notice updates guidance to dealers on (i) their obligations to disclose material information about issuers, their securities and credit/liquidity support for such securities in connection with the fulfillment of their disclosure obligations under MSRB Rule G-17, (ii) their obligations to use such material information in fulfilling their suitability obligations under MSRB Rule G-19, and (iii) their fair pricing obligations under MSRB Rules G-18 and G-30.[2] This Notice also applies previous guidance on bond insurance rating downgrades and wide-scale auction failures for municipal auction rate securities ("ARS") to municipal securities transactions in general and specifically to transactions with individual and other retail investors in variable rate demand obligations ("VRDOs").[3]

---

1 *See Federal Reserve Flow of Funds*, Table L-211 (June 11, 2009) available at http://www.federalreserve.gov/releases/z1/Current/ (The household category in the Table reflects direct investments by individual investors, as well as investments by trusts, investment advisors, arbitrageurs, and various other accounts that do not fall into other tracked categories).

2 *See Reminder of Customer Protection Obligations in Connection With Sales of Municipal Securities*, MSRB Notice 2007-17 (May 30, 2007) (the "Fair Practice Notice"); *Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans*, MSRB Notice 2006-23 (August 7, 2006) (the "529 Notice").

3 *See Application of MSRB Rules to Transactions in Auction Rate Securities*, MSRB Notice 2008-09 (February 19, 2008) (the "ARS Notice"); *Bond Insurance Ratings Application of MSRB Rules*, MSRB Notice 2008-04 (January 22, 2008) (the "Bond Insurance Notice").

Basic Investor Protection Obligation

Rule G-17 is the core of the MSRB's investor protection rules. It provides that, in the conduct of its municipal securities activities, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice. The rule contains an anti-fraud prohibition similar to the standard set forth in Rule 10b-5 adopted by the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934 (the "Exchange Act"). However, it also establishes a general duty to deal fairly, even in the absence of fraud. This general duty to deal fairly places several specific obligations on dealers with respect to their dealings with their customers, including the obligation to disclose material information, described below. All activities of dealers must be viewed in light of these basic principles, regardless of whether other MSRB rules establish additional requirements on dealers.

Access to Material Information in the Municipal Securities Market

Many of the investor protection obligations established under MSRB rules are premised on dealer access to material information about municipal securities. Such access is fundamental not only to the ability of a dealer to meet its disclosure obligations to customers under MSRB rules but also to the ability of the dealer to undertake the necessary analyses to determine the suitability of a recommended municipal securities transaction and to determine the prevailing market price in connection with establishing a fair transaction price, among other things.

As professionals in the marketplace, dealers use a combination of internal resources and public and proprietary information sources to obtain the information necessary to conduct their business in a professional manner and to meet their disclosure and fair practice duties to investors. In 2002, the MSRB identified certain "established industry sources" in the municipal securities market that were available to and generally used by dealers that effect transactions in municipal securities.[4] While dealers and some institutional investors could readily access

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[4] *See* Rule G-17 Interpretation – Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, *reprinted in* MSRB Rule Book (the "2002 Disclosure Notice"). The 2002 Disclosure Notice described these established industry sources as including such sources as the system of nationally recognized municipal securities information repositories ("NRMSIRs") established by the SEC under Exchange Act Rule 15c2-12 for continuing disclosures by issuers and other obligors, the MSRB's Municipal Securities Information Library® (MSIL®) system for official statements and advance refunding documents, the MSRB's Transaction Reporting System for prices of transactions in municipal securities, rating agency reports, and other sources of information on municipal securities generally used by dealers that effect transactions in the type of securities at issue.

information from the established industry sources directly or through information vendors, most investors (and, in particular, individual investors) did not have ready access to many of the established industry sources and were largely limited to the information they could obtain through dealers.

With the advent of the MSRB's Electronic Municipal Market Access system ("EMMA") as a new established industry source, the amount, nature, timing and accessibility of information available to the entire marketplace, including both professionals and individual investors, has changed significantly since 2002. Official statements and other primary market disclosure documents, as well as continuing disclosure documents, are available to the general public through the EMMA web portal. Transaction price information is now available on a real-time basis, and comprehensive interest rate information for VRDOs and ARS also is available for the first time. All of this information is made available to the general public, at no cost, through the EMMA web portal, and also is available through subscription feeds to market participants and information vendors. It is expected that information vendors will continue to make this information available to their clients, together with increasing levels of value added products.

Disclosure of Material Information

General Disclosure Duty. Rule G-17 requires a dealer effecting a municipal securities transaction to disclose to its customer all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market.[5] Information available from established industry sources is deemed to be reasonably accessible to the market for purposes of this Rule G-17 disclosure obligation. Such disclosures must be made at or prior to the sale of municipal securities to the investor (*i.e.*, when the investor and the dealer agree to make the trade), also referred to as the "time of trade." This is a key protection mandated by MSRB rules.[6] This disclosure duty applies to any municipal securities transaction, regardless of whether the dealer is acting as a so-called "order-taker" (as when the trade is "unsolicited"), whether the transaction is recommended, or whether the transaction is a

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5 *See* 2002 Disclosure Notice, *supra* n.5.

6 Additional MSRB disclosure requirements under Rule G-15, relating to trade confirmations, and Rule G-32, relating to official statements, focus on information to be provided after the investment decision and do not fulfill the Rule G-17 disclosure obligation because they are not provided at or prior to the investment decision. Recent amendments to MSRB Rule G-32 in connection with electronic dissemination of official statements to investors purchasing municipal securities in a primary offering do not alter this time-of-trade disclosure obligation.

primary or secondary market trade.[7] Dealers continue to be obligated to make the required time of trade disclosures to their customers mandated by Rule G-17, notwithstanding the availability to investors of comprehensive information from EMMA and other established industry sources.

In general, information is considered "material" if there is a substantial likelihood that its disclosure would have been considered important or significant by a reasonable investor.[8] The duty to disclose material information to a customer in a municipal securities transaction includes the duty to give a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor and facts that are material to assessing the potential risks of the investment.[9] For VRDOs, ARS or other securities for which interest payments may fluctuate, such material facts would include a description of the basis on which periodic interest rate resets are determined.

The scope of material information that dealers are obligated to disclose to their customers under Rule G-17 is not limited solely to the information made available through established industry sources. Dealers also must disclose material information they know about the securities even if such information is not then available from established industry sources. It is essential that dealers establish procedures reasonably designed to ensure that information known to the dealer is communicated internally or otherwise made available to relevant personnel in a manner reasonably designed to ensure compliance with this disclosure obligation.

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7 A dealer's specific investor protection obligations, including its disclosure, fair practice and suitability obligations under Rules G-17 and G-19, may be affected by the status of an institutional investor as a Sophisticated Municipal Market Professional ("SMMP"). *See* Rule G-17 Interpretation – Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals, April 30, 2002, *reprinted in* MSRB Rule Book.

8 *See* ARS Notice and Bond Insurance Notice; *see also Basic v. Levinson*, 485 U.S. 224 (1988). The SEC has described material facts as those "facts which a prudent investor should know in order to evaluate the offering before reaching an investment decision." *Municipal Securities Disclosure*, Exchange Act Release No. 26100 (September 22, 1988) at note 76, quoting *In re Walston & Co. Inc., and Harrington*, Exchange Act Release No. 8165 (September 22, 1967).

9 *See, e.g.*, Rule G-17 Interpretation – Educational Notice on Bonds Subject to "Detachable" Call Features, May 13, 1993, *reprinted in* MSRB Rule Book; Rule G-17 Interpretation – Notice Concerning Disclosure of Call Information to Customers of Municipal Securities, March 4, 1986, *reprinted in* MSRB Rule Book.

Disclosures with Respect to Credit/Liquidity Enhancement and Ratings. The MSRB previously has provided guidance on specific disclosures that may be required in connection with insured municipal securities, including in particular insured ratings, underlying ratings and potential rating actions disclosed by the rating agencies.[10] The principles enunciated with respect to insured bonds also are generally applicable in connection with any third-party credit enhancement provided with respect to municipal securities, regardless of the type of such enhancement. This disclosure obligation extends to enhancements such as, without limitation, letters of credit, surety bonds, state or federal agency enhancements, and other similar products or programs.

For VRDOs, dealers generally must consider factors relevant to both the long-term nature of the securities as well as short-term liquidity features of such securities. Banks or other financial institutions (collectively, "banks") may issue letters of credit or similar product ("LOCs"), which provide both long-term credit support (by guaranteeing payment of principal and interest on VRDOs) and short-term liquidity support (by guaranteeing the purchase price of tendered VRDOs). Alternatively, banks may provide only liquidity support for tendered VRDOs, through a standby bond purchase agreement or similar product ("SBPA"). Typically, an SBPA is used when the issuer has a strong credit rating by itself or it is coupled with bond insurance. However, while LOCs are generally irrevocable for the term of the LOC, that is frequently not the case with SBPAs. Some SBPAs are structured so that certain negative credit or other events with regard to the issue or bond insurer result in the immediate termination of the SBPA and the loss of liquidity support, without a prior mandatory tender of the bonds.[11] If such an immediate termination event occurs, investors are left holding long-term, floating-rate bonds with no tender right.

The role of the remarketing agent also may be material to investors. If the remarketing agent for a VRDO has customarily or from time-to-time taken tendered bonds into inventory to make it unnecessary to draw on the liquidity facility for unremarketed bonds (thereby in effect providing liquidity support), the fact that the remarketing agent is not contractually obligated to maintain such practice will generally be material information required to be disclosed to customers to which VRDOs are sold.

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10 *See* Bond Insurance Notice, *supra* n.3.

11 The termination of the SBPA may result in other changes to the terms of securities, such as the loss of any rights to tender the securities for purchase or an interest rate to be determined based on a floating rate index or in another manner, which may produce a yield that is substantially below market for a fixed rate bond of comparable maturity. Such facts may be material to investors.

The following information will generally be material information required to be disclosed to investors in credit/liquidity enhanced securities, including but not limited to VRDOs, if known to the dealer or if reasonably available from established industry sources: (i) the credit rating of the issue or lack thereof; (ii) the underlying credit rating or lack thereof, (iii) the identity of any credit enhancer or liquidity provider; and (iv) the credit rating of the credit provider and liquidity provider, including potential rating actions (*e.g.*, downgrade). Additionally, material terms of the credit facility or liquidity facility should be disclosed (e.g., any circumstances under which an SBPA would terminate without a mandatory tender). This list is not exhaustive. Other information may also be material to investors in credit/liquidity enhanced securities.

Other Investor Protection Obligations

Although disclosure to investors is a key customer protection duty of dealers under MSRB rules, other important customer protection rules also apply. Thus, dealers are reminded that they are not relieved of their suitability obligations under MSRB Rule G-19 simply by disclosing material information to the customer. They are also not relieved of their fair pricing obligations to their customers under MSRB Rules G-18 and G-30 by disclosing material information to investors. The information known by a dealer in connection with a municipal security, together with the information available from established industry sources, generally should inform the dealer, to the extent applicable, in undertaking the necessary analyses and determinations needed to meet these other customer protection obligations.

Suitability of Recommendations. Under MSRB Rule G-19, a dealer that recommends a municipal securities transaction to a customer must have reasonable grounds for believing that the recommendation is suitable, based upon information available from the issuer of the security or otherwise (including from established industry sources) and the facts disclosed by or otherwise known about the customer.[12] To assure that a dealer effecting a recommended transaction with an individual investor has the information needed about the investor to make its suitability determination, the rule requires the dealer to make reasonable efforts to obtain

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[12] *See, e.g.*, Fair Practice Notice, *supra* n.2. The MSRB has previously stated that most situations in which a dealer brings a municipal security to the attention of a customer involve an implicit recommendation of the security to the customer, but determining whether a particular transaction is in fact recommended depends on an analysis of all the relevant facts and circumstances. *See* Rule G-19 Interpretive Letter – Recommendations, February 17, 1998, published in *MSRB Rule Book*. The MSRB also has provided guidance on recommendations in the context of on-line communications in Rule G-19 Interpretation – Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications, September 25, 2002, published in *MSRB Rule Book.*

information concerning the investor's financial status, tax status and investment objectives, as well as any other information reasonable and necessary in making the recommendation.[13]

Dealers are reminded that the obligation arising under Rule G-19 in connection with a recommended transaction requires a meaningful analysis,[14] taking into consideration the information obtained about the investor and the security, which establishes the reasonable grounds for believing that the recommendation is suitable. Such suitability determinations are required regardless of the apparent safety of a particular security or issuer or the apparent wealth or sophistication of a particular investor. Suitability determinations should be based on the appropriately weighted factors that are relevant in any particular set of facts and circumstances, and those factors may vary from transaction to transaction. Factors to be considered include, but are not limited to, the investor's financial profile, tax status, investment objectives (including portfolio concentration/diversification), and the specific characteristics and risks of the municipal security recommended to the investor.

The MSRB notes that Section (c) of Exchange Act Rule 15c2-12 provides that it is impermissible for a dealer to recommend the purchase or sale of a municipal security unless the dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of the specified material events that are subject to the continuing disclosure obligations of the rule. A dealer would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in undertaking its suitability determination.

With regard to credit-enhanced securities, facts relating to the credit rating of the credit enhancer may affect suitability determinations, particularly for investors who have conveyed to the dealer investment objectives relating to credit quality of investments. For example, if a customer has expressed the desire to purchase only "triple A" rated securities, recommendations to the customer should take into account information from rating agencies, including information about potential rating actions that may affect the future "triple A" status of the issue. In the case of recommended VRDOs or any other securities that are viewed as providing significant liquidity to investors, a dealer must consider both the liquidity characteristics of the security and the investor's need for a liquid investment when making a suitability determination. Facts relating to the short-term credit rating, if any, of the LOC or SBPA provider, or of any other third-party liquidity facility provider, generally would affect suitability determinations in such securities. To the extent that an investor seeks to invest in VRDOs due to their liquidity characteristics, a suitability analysis also generally would require a dealer, in recommending a

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13 Rule G-8(a)(xi)(F) requires that dealers maintain records for each customer of such information about the customer used in making recommendations to the customer.

14 *See* 529 Notice n.2; Fair Practice Notice n.2; Bond Insurance Notice n. 3.

VRDO to an individual investor, to consider carefully the circumstances, if any, under which the liquidity feature may no longer be effectively available to the customer.

It is incumbent upon any dealer wishing to market municipal securities to customers that it understand the material features of the security, particularly if such dealer is to fulfill its obligation to undertake a suitability determination in connection with a recommended transaction. Dealers should take particular care with respect to new products that may be introduced into the municipal securities market,[15] existing products that may have complex structures that can differ materially from issue to issue, and outstanding securities that may trade infrequently, may be issued by less well-known issuers, or may have unusual features. Dealers are reminded that they must review the relevant disclosure documents to become familiar with the specific characteristics of the product, including the tax features, prior to recommending such products to their customers.

Fair Pricing. MSRB Rule G-30(a) establishes the pricing obligation of dealers in principal transactions between dealers and customers. The rule provides that the aggregate transaction price to the customer must be fair and reasonable, taking into consideration all relevant factors. A "fair and reasonable" price is one that bears a reasonable relationship to the prevailing market price of the security.[16] Dealers have a similar obligation with respect to the price of securities sold in agency transactions pursuant to Rule G-18. Dealer compensation on a principal transaction is considered to be a mark-up or mark-down that is computed from the inter-dealer market price prevailing at the time of the customer transaction, while compensation on an agency transaction generally consists of a commission. As part of the aggregate price to

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15 From time to time, the MSRB provides guidance on specific new products introduced into the municipal securities market. For example, the American Recovery and Reinvestment Act of 2009 authorized state and local governments to issue two types of Build America Bonds ("BABs") as taxable governmental bonds with federal subsidies for a portion of their borrowing costs. The MSRB has previously provided guidance to dealers regarding the application of MSRB rules to BABs, including fair practice rules. *See Build America Bonds and Other Tax Credit Bonds*, MSRB Notice 2009-15 (April 24, 2009); *Build America Bonds: Application of Rule G-37 to Solicitations of Issuers*, MSRB Notice 2009-30 (June 9, 2009). In addition, the MSRB has provided guidance on dealer transactions in registered warrants, or IOUs, issued by the State of California. *See Applicability of MSRB Rules to California Registered Warrants*, MSRB Notice 2009-41 (July 10, 2009). Nonetheless, dealers must understand the material features of any security they recommend, regardless of whether specific guidance is provided by the MSRB.

16 *See Review of Dealer Pricing Responsibilities*, MSRB Notice 2004-3 (January 26, 2004) (the "Dealer Pricing Notice").

the customer, the mark-up or mark-down also must be fair and reasonable, taking into account all relevant factors.[17] Similarly, under Rule G-30(b), the commission on an agency transaction must be fair and reasonable, taking into account all relevant factors.

As a general matter, in addition to information about prices of transactions effected by such dealers and other market participants in such security, material information about a security available through EMMA or other established industry sources may also be among the relevant factors that the dealer should consider in connection with ensuring fair pricing of its transactions with investors. Among other things, dealers would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in determining a fair and reasonable transaction price. In addition, dealers should consider the effect of ratings on the value of the securities involved in customer transactions, and should specifically consider the effect of information from rating agencies, both with respect to actual or potential changes in the underlying rating of a security and with respect to actual or potential changes in the rating of any third-party credit enhancement applicable to the security.

Finally, many issuers currently include a retail order period in the marketing of new issues. The retail order period is intended to provide an opportunity for individual investors to place orders in advance of institutional investors. Dealers are reminded that an issuer's use of a retail order period based on a perception that the retail order period will improve pricing of the new issue for the issuer does not create a safe harbor for dealers to engage in pricing that violates the fair pricing obligation under Rule G-30. Large differences between institutional and individual prices that exceed the price/yield variance that normally applies to transactions of different sizes in the primary market provide evidence that the duty of fair pricing to individual clients may not have been met.

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(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was adopted by the MSRB on July 9, 2009. Questions concerning this filing may be directed to Lawrence P. Sandor, Associate General Counsel, or Margaret C. Henry, Associate General Counsel, at (703) 797-6600.

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[17] Dealer Pricing Notice, *supra.*

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change provides guidance to brokers, dealers and municipal securities dealers ("dealers") of their sales practice obligations under MSRB rules as applied specifically to individual and other retail investors. Among other things, the proposed rule change updates guidance to dealers on (i) their obligations to disclose material information about issuers, their securities and credit/liquidity support for such securities in connection with the fulfillment of their disclosure obligations under MSRB Rule G-17, (ii) their obligations to use such material information in fulfilling their suitability obligations under MSRB Rule G-19, and (iii) their fair pricing obligations under MSRB Rules G-18 and G-30. The proposed rule change also applies previous guidance on bond insurance rating downgrades and wide-scale auction failures for municipal auction rate securities ("ARS"), to municipal securities transactions in general and specifically to transactions with individual and other retail investors in variable rate demand obligations ("VRDOs").

Disclosure

The proposed rule change makes clear that dealers are responsible under Rule G-17 for disclosing to their customers, at or prior to the time of trade for any municipal securities transaction, all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market, including information available from established industry sources. Dealers must provide such disclosures notwithstanding the availability to investors of comprehensive information from the MSRB's Electronic Municipal Market Access system (EMMA) and other established industry sources. Dealers are expected to establish procedures reasonably designed to ensure that information known to the dealer is communicated internally or otherwise made available to relevant personnel in a manner reasonably designed to ensure compliance with this disclosure obligation.

The proposed rule change provides that, in general, information is considered "material" if there is a substantial likelihood that its disclosure would have been considered important or significant by a reasonable investor. The duty to disclose material information to a customer in a municipal securities transaction includes the duty to give a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor and facts that are material to assessing the potential risks of the investment. For VRDOs, ARS or other securities for which interest payments may fluctuate, such material facts would include a description of the basis on which periodic interest rate resets are determined.

The proposed rule change provides that the following information will generally be material information required to be disclosed to investors in credit/liquidity enhanced securities, including but not limited to VRDOs, if known to the dealer or if reasonably available from established industry sources: (i) the credit rating of the issue or lack thereof; (ii) the underlying

credit rating or lack thereof, (iii) the identity of any credit enhancer or liquidity provider; and (iv) the credit rating of the credit provider and liquidity provider, including potential rating actions (*e.g.*, downgrade). Additionally, material terms of the credit facility or liquidity facility should be disclosed (e.g., any circumstances under which a standby bond purchase agreement ("SBPA") would terminate without a mandatory tender). If the remarketing agent for a VRDO has customarily or from time-to-time taken tendered bonds into inventory to make it unnecessary to draw on the liquidity facility for unremarketed bonds (thereby in effect providing liquidity support), the fact that the remarketing agent is not contractually obligated to maintain such practice will generally be material information required to be disclosed to customers to which VRDOs are sold. This list is not exhaustive. Other information may also be material to investors in credit/liquidity enhanced securities.

The proposed rule change reminds dealers that they are not relieved of their suitability obligations under MSRB Rule G-19 or their fair pricing obligations to their customers under MSRB Rules G-18 and G-30 simply by disclosing material information to the customer. The information known by a dealer in connection with a municipal security, together with the information available from established industry sources, generally should inform the dealer, to the extent applicable, in undertaking the necessary analyses and determinations needed to meet these other customer protection obligations.

Suitability

Under the proposed rule change, dealers are obligated to make a suitability determination arising under Rule G-19 in connection with a recommended transaction. This requires a meaningful analysis, taking into consideration the information obtained about the investor and the security, which establishes the reasonable grounds for believing that the recommendation is suitable. Such suitability determinations are required regardless of the apparent safety of a particular security or issuer or the apparent wealth or sophistication of a particular investor. Suitability determinations should be based on the appropriately weighted factors that are relevant in any particular set of facts and circumstances, and those factors may vary from transaction to transaction. Factors to be considered include, but are not limited to, the investor's financial profile, tax status, investment objectives (including portfolio concentration/diversification), and the specific characteristics and risks of the municipal security recommended to the investor.

In the proposed rule change, the MSRB notes that Section (c) of Exchange Act Rule 15c2-12 provides that it is impermissible for a dealer to recommend the purchase or sale of a municipal security unless the dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of the specified material events that are subject to the continuing disclosure obligations of the rule. A dealer would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in undertaking its suitability determination.

The proposed rule change provides guidance specifically with regard to credit-enhanced securities. Facts relating to the credit rating of the credit enhancer may affect suitability determinations, particularly for investors who have conveyed to the dealer investment objectives relating to credit quality of investments. In the case of recommended VRDOs or any other securities that are viewed as providing significant liquidity to investors, a dealer must consider both the liquidity characteristics of the security and the investor's need for a liquid investment when making a suitability determination. Facts relating to the short-term credit rating, if any, of a letter of credit or SBPA provider, or of any other third-party liquidity facility provider, generally would affect suitability determinations in such securities. To the extent that an investor seeks to invest in VRDOs due to their liquidity characteristics, a suitability analysis also generally would require a dealer, in recommending a VRDO to an individual investor, to consider carefully the circumstances, if any, under which the liquidity feature may no longer be effectively available to the customer.

With respect to new products introduced into the municipal securities market, the proposed rule change reminds dealers that they must review the relevant disclosure documents to become familiar with the specific characteristics of the product, including the tax features, prior to recommending such products to their customers.

Pricing

The proposed rule change provides that, as a general matter, in addition to information about prices of transactions effected by dealers and other market participants in a particular municipal security, material information about a security available through EMMA or other established industry sources may also be among the relevant factors that the dealer should consider in connection with ensuring fair pricing of its transactions with investors. Among other things, dealers would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in determining a fair and reasonable transaction price. In addition, dealers should consider the effect of ratings on the value of the securities involved in customer transactions, and should specifically consider the effect of information from rating agencies, both with respect to actual or potential changes in the underlying rating of a security and with respect to actual or potential changes in the rating of any third-party credit enhancement applicable to the security.

Dealers are reminded that an issuer's use of a retail order period based on a perception that the retail order period will improve pricing of the new issue for the issuer does not create a safe harbor for dealers to engage in pricing that violates the fair pricing obligation under Rule G-30. Large differences between institutional and individual prices that exceed the price/yield variance that normally applies to transactions of different sizes in the primary market provide evidence that the duty of fair pricing to individual clients may not have been met.

(b) The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which provides that MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act because it will further investor protection by strengthening and clarifying dealers' customer protection obligations relating to sales of municipal securities to individual and other retail customers, including but not limited to the duty to provide material information to customers investing in municipal securities and to use material information in fulfilling their suitability obligations and their fair pricing obligations.

4. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all dealers.

5. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

6. Extension of Time Period for Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The MSRB has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the MSRB under Section 19(b)(3)(a)(i) of the Act and Rule 19b-4(f)(1) thereunder, which renders the proposal effective upon receipt of this filing by the Commission.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Federal Register Notice.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MSRB-2009-08)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Rule Change by the Municipal Securities Rulemaking Board Relating to Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 14, 2009, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change consisting of interpretive guidance on disclosure and other sales practice obligations of brokers, dealers and municipal securities dealers ("dealers") relating to sales of municipal securities to individual and other retail investors. The text of the proposed rule change is available on the MSRB's web site at www.msrb.org, at the MSRB's principal office, and at the Commission's Public Reference Room.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change provides guidance to brokers, dealers and municipal securities dealers ("dealers") of their sales practice obligations under MSRB rules as applied specifically to individual and other retail investors. Among other things, the proposed rule change updates guidance to dealers on (i) their obligations to disclose material information about issuers, their securities and credit/liquidity support for such securities in connection with the fulfillment of their disclosure obligations under MSRB Rule G-17, (ii) their obligations to use such material information in fulfilling their suitability obligations under MSRB Rule G-19, and (iii) their fair pricing obligations under MSRB Rules G-18 and G-30. The proposed rule change also applies previous guidance on bond insurance rating downgrades and wide-scale auction failures for municipal auction rate securities ("ARS"), to municipal securities transactions in general and specifically to transactions with individual and other retail investors in variable rate demand obligations ("VRDOs").

Disclosure

The proposed rule change makes clear that dealers are responsible under Rule G-17 for disclosing to their customers, at or prior to the time of trade for any municipal securities transaction, all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market, including information available from established industry sources. Dealers must provide such disclosures notwithstanding the availability to investors of comprehensive information from the MSRB's Electronic Municipal Market Access system (EMMA) and other established industry sources. Dealers are expected to establish procedures reasonably designed to ensure that information known to the dealer is communicated internally or otherwise made available to relevant personnel in a manner reasonably designed to ensure compliance with this disclosure obligation.

The proposed rule change provides that, in general, information is considered "material" if there is a substantial likelihood that its disclosure would have been considered important or significant by a reasonable investor. The duty to disclose material information to a customer in a municipal securities transaction includes the duty to give a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor and facts that are material to assessing the potential risks of the investment. For VRDOs, ARS or other securities for which interest payments may fluctuate, such material facts would include a description of the basis on which periodic interest rate resets are determined.

The proposed rule change provides that the following information will generally be material information required to be disclosed to investors in credit/liquidity enhanced

securities, including but not limited to VRDOs, if known to the dealer or if reasonably available from established industry sources: (i) the credit rating of the issue or lack thereof; (ii) the underlying credit rating or lack thereof, (iii) the identity of any credit enhancer or liquidity provider; and (iv) the credit rating of the credit provider and liquidity provider, including potential rating actions (*e.g.*, downgrade). Additionally, material terms of the credit facility or liquidity facility should be disclosed (e.g., any circumstances under which a standby bond purchase agreement ("SBPA") would terminate without a mandatory tender). If the remarketing agent for a VRDO has customarily or from time-to-time taken tendered bonds into inventory to make it unnecessary to draw on the liquidity facility for unremarketed bonds (thereby in effect providing liquidity support), the fact that the remarketing agent is not contractually obligated to maintain such practice will generally be material information required to be disclosed to customers to which VRDOs are sold. This list is not exhaustive. Other information may also be material to investors in credit/liquidity enhanced securities.

The proposed rule change reminds dealers that they are not relieved of their suitability obligations under MSRB Rule G-19 or their fair pricing obligations to their customers under MSRB Rules G-18 and G-30 simply by disclosing material information to the customer. The information known by a dealer in connection with a municipal security, together with the information available from established industry sources, generally should inform the dealer, to the extent applicable, in undertaking the necessary analyses and determinations needed to meet these other customer protection obligations.

Suitability

Under the proposed rule change, dealers are obligated to make a suitability determination arising under Rule G-19 in connection with a recommended transaction. This requires a meaningful analysis, taking into consideration the information obtained about the investor and the security, which establishes the reasonable grounds for believing that the recommendation is suitable. Such suitability determinations are required regardless of the apparent safety of a particular security or issuer or the apparent wealth or sophistication of a particular investor. Suitability determinations should be based on the appropriately weighted factors that are relevant in any particular set of facts and circumstances, and those factors may vary from transaction to transaction. Factors to be considered include, but are not limited to, the investor's financial profile, tax status, investment objectives (including portfolio concentration/diversification), and the specific characteristics and risks of the municipal security recommended to the investor.

In the proposed rule change, the MSRB notes that Section (c) of Exchange Act Rule 15c2-12 provides that it is impermissible for a dealer to recommend the purchase or sale of a municipal security unless the dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of the specified material events that are subject to the continuing disclosure obligations of the rule. A dealer would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in undertaking its suitability determination.

The proposed rule change provides guidance specifically with regard to credit-enhanced securities. Facts relating to the credit rating of the credit enhancer may affect

suitability determinations, particularly for investors who have conveyed to the dealer investment objectives relating to credit quality of investments. In the case of recommended VRDOs or any other securities that are viewed as providing significant liquidity to investors, a dealer must consider both the liquidity characteristics of the security and the investor's need for a liquid investment when making a suitability determination. Facts relating to the short-term credit rating, if any, of a letter of credit or SBPA provider, or of any other third-party liquidity facility provider, generally would affect suitability determinations in such securities. To the extent that an investor seeks to invest in VRDOs due to their liquidity characteristics, a suitability analysis also generally would require a dealer, in recommending a VRDO to an individual investor, to consider carefully the circumstances, if any, under which the liquidity feature may no longer be effectively available to the customer.

With respect to new products introduced into the municipal securities market, the proposed rule change reminds dealers that they must review the relevant disclosure documents to become familiar with the specific characteristics of the product, including the tax features, prior to recommending such products to their customers.

Pricing

The proposed rule change provides that, as a general matter, in addition to information about prices of transactions effected by dealers and other market participants in a particular municipal security, material information about a security available through EMMA or other established industry sources may also be among the relevant factors that the dealer should consider in connection with ensuring fair pricing of its transactions with investors. Among other things, dealers would be expected to have reviewed any

applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in determining a fair and reasonable transaction price. In addition, dealers should consider the effect of ratings on the value of the securities involved in customer transactions, and should specifically consider the effect of information from rating agencies, both with respect to actual or potential changes in the underlying rating of a security and with respect to actual or potential changes in the rating of any third-party credit enhancement applicable to the security.

Dealers are reminded that an issuer's use of a retail order period based on a perception that the retail order period will improve pricing of the new issue for the issuer does not create a safe harbor for dealers to engage in pricing that violates the fair pricing obligation under Rule G-30. Large differences between institutional and individual prices that exceed the price/yield variance that normally applies to transactions of different sizes in the primary market provide evidence that the duty of fair pricing to individual clients may not have been met.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which provides that MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove

> impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act because it will further investor protection by strengthening and clarifying dealers' customer protection obligations relating to sales of municipal securities to individual and other retail customers, including but not limited to the duty to provide material information to customers investing in municipal securities and to use material information in fulfilling their suitability obligations and their fair pricing obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2009-08 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2009-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection

and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2009-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[3]

Elizabeth M. Murphy
Secretary

[3] 17 CFR 200.30-3(a)(12).

OMB APPROVAL	
OMB Number:	3235-0045
Expires:	June 30, 2010
Estimated average burden hours per response	38

Page 1 of 47

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 09
Amendment No.

Proposed Rule Change by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial	Amendment	Withdrawal	Section 19(b)(2)	Section 19(b)(3)(A)	Section 19(b)(3)(B)
☑	☐	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change relating to Rule G-32, on disclosures in connection with primary offerings, Form G-32, and the primary market disclosure and primary market subscription services of the MSRB's Electronic Municipal Market Access system (EMMA).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name: Leslie Last Name: Carey
Title: Associate General Counsel
E-mail: lcarey@msrb.org
Telephone: (703) 797-6600 Fax: (703) 797-6700

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

Municipal Securities Rulemaking Board

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date: 07/14/2009

By: Ronald W. Smith (Name)

Corporate Secretary (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Ronald Smith, rsmith@msrb.org

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "MSRB") is hereby filing with the Securities and Exchange Commission (the "Commission") a proposed rule change relating to Rule G-32, on disclosures in connection with primary offerings, Form G-32, and the primary market disclosure and primary market subscription services of the MSRB's Electronic Municipal Market Access system ("EMMA"). The proposed rule change would require brokers, dealers and municipal securities dealers ("dealers") acting as underwriters, placement agents or remarketing agents for primary offerings of municipal securities ("underwriters") to provide to EMMA, and to make available on the EMMA web portal and through the EMMA primary market subscription service, information about whether the issuer or other obligated person has undertaken to provide continuing disclosures, the identity of any obligated persons other than the issuer, and the timing by which such issuers or obligated persons have agreed to provide annual financial and operating data. The MSRB requests an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

The text of the proposed rule change is set forth below:[1]

* * * * * * * * * *

PROPOSED AMENDMENT TO RULE G-32

Rule G-32. Disclosures In Connection With Primary Offerings

(a) No change.

(b) Underwriter Submissions to EMMA.

(i)-(v) No change.

(vi) Procedures for Submitting Documents and Form G-32 Information.

(A)-(B) No change.

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[1] Underlining indicates additions; brackets indicate deletions. Revisions to Form G-32 are indicated in Exhibit 3. The text of the proposed rule change will be available on the MSRB Web site at www.msrb.org/msrb1/sec.asp.

(C) The underwriter in any primary offering of municipal securities for which a document or information is required to be submitted to EMMA under this section (b) shall submit such information in a timely and accurate manner as follows:

(1) Form G-32 information submissions pursuant to paragraph (b)(i)(A) hereof with respect to a primary offering shall be:

(a) initiated on or prior to the date of first execution with the submission of CUSIP numbers (except if such CUSIP numbers are not required under Rule G-34 and have not been assigned), initial offering prices or yields (including prices or yields for maturities designated as not reoffered), if applicable, [and] the expected closing date, and whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information as contemplated by Securities Exchange Act Rule 15c2-12, together with such other items of information as set forth in Form G-32 and the EMMA Dataport Manual; and

(b) No change.

Specific items of information required by Form G-32 shall be submitted at such times and in such manners as set forth in the EMMA Dataport Manual.

(2)-(4) No change.

(D) No change.

(c) No change.

(d) Definitions. For purposes of this rule, the following terms have the following meanings:

(i)-(xii) No change.

(xiii) The term "obligated person" shall mean an obligated person defined in Securities Exchange Act Rule 15c2-12(f)(10) with respect to all or a portion of the municipal securities in a primary offering.

(e) No change.

* * * * * * * * *

PROPOSED AMENDMENT TO PRIMARY MARKET DISCLOSURE SUBSCRIPTION

EMMA SUBSCRIPTION SERVICES

EMMA Primary Market Disclosure Subscription Service

No change.

Submission Data: No change

Offering Data: No change

Issue Data: issue type; security type; issuer name; issue description; state; closing date; dated dates; remarketing/commercial paper identifiers; continuing disclosure status; obligated person; annual filing deadline for financial information

Security Data: No change

Document Data: No change

File Data: No change

Limited Offering Contact Data: No change

No change

* * * * * * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was adopted by the MSRB on July 17, 2008. Questions concerning this filing may be directed to Leslie Carey, Associate General Counsel, or Justin R. Pica, Director, Uniform Practice Policy, at (703) 797-6600.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change would amend Rule G-32 and Form G-32 to require underwriters of primary offerings of municipal securities to submit to the MSRB's EMMA system, as part of their primary offering submission obligation under Rule G-32(b), certain key items of information relating to continuing disclosure undertakings made by issuers and other obligated persons in connection with such primary offerings. These items of information would be made available to the public through the EMMA web portal and are intended to inform investors in advance whether continuing disclosures will be made available with respect to a particular municipal security, from and about whom such continuing disclosures are expected to be made, and the timing by which such disclosures should be made available.

The items of information regarding continuing disclosure undertakings to be provided by underwriters through Form G-32 would include:

- whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information as contemplated by Securities Exchange Act Rule 15c2-12

- the name of any obligated person, other than the issuer of the municipal securities, that has or will undertake, or is otherwise expected to provide, continuing disclosure pursuant to the continuing disclosure undertaking

- the date or dates identified in the continuing disclosure undertaking, pursuant to Securities Exchange Act Rule 15c2-12(b)(5)(ii)(C) or otherwise, by which annual financial information is expected to be submitted each year by the issuer and/or any obligated persons to the EMMA system

- contact information for a representative of the issuer and/or any obligated persons for purposes of establishing continuing disclosure submission accounts for such issuer and/or obligated persons in connection with their submissions to the EMMA system.

The underwriter would be required to provide information regarding whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information as contemplated by Securities Exchange Act Rule 15c2-12 by no later than the date of first execution of transactions in municipal securities sold in the primary offering. The remaining items of information would be required to be provided by the closing date of the primary offering. The name or names of obligated persons to be provided would be of the entity acting as an obligated person, not an individual at such entity, unless the obligated person is in fact an individual. The date by which the issuer or obligated person has undertaken to submit annual financial information would be submitted as a specific month and day, accurate as of the closing

of the primary offering.[2] If annual financial information is expected to be submitted by more than one entity and such information is expected to be submitted on different dates, each such date would be provided matched to the appropriate issuer and/or obligated person. Underwriters currently are able to provide contact information for issuer or obligated person representatives with respect to current and past primary offerings through EMMA on a voluntary basis. The proposed rule change would require that such information be provided as part of the underwriter's Form G-32 submission process for new primary offerings.

Until closing, the underwriter would be required to update promptly any information it has previously provided on Form G-32 which may have changed or to correct promptly any inaccuracies in such information, and would be responsible for ensuring that such information provided by it is accurate as of the closing date. So long as the underwriter has provided such information accurately as of the closing date, it would not be obligated to update the information provided if there are any subsequent changes to such information, such as additions, deletions or modifications to the identities of obligated persons or changes in the timing for providing annual financial information. Issuers and obligated persons will be able to make changes to such information through their submission accounts established in connection with EMMA's continuing disclosure service.

Information regarding whether an offering is subject to a continuing disclosure undertaking, the names of obligated persons and the dates for providing annual financial information would be displayed on the EMMA web portal and also would be included in EMMA's primary market disclosure subscription service.[3] These items are intended to provide investors and others with information on the expected availability of disclosures following the initial issuance of the securities. In particular, users of the EMMA web portal would be able to determine which obligated persons are expected to submit annual financial information, audited

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2 For example, EMMA would not accept a submission of information stating that the annual financial information will be provided within a particular number of days after the end of the fiscal year since investors and other market participants may not have ready access to information about the issuer or obligated person's fiscal year. Simultaneous with this filing, the MSRB is filing with the Commission a proposed rule change that would amend EMMA's continuing disclosure service to, among other things, allow an issuer or obligated person to publish on the public EMMA web portal, on a voluntary basis, information about its undertaking to provide audited financial statements within 120 days after the end of the fiscal year. *See* SR-MSRB-2009-10 (July 14, 2009).

3 Contact information for issuers and obligated persons provided by underwriters would be used by the MSRB solely for purposes of inviting such issuers and obligated persons to establish submission accounts with the MSRB and will not be displayed on the EMMA web portal and will not be included in the primary market disclosure subscription service.

financial statements and material event notices on an on-going basis, as well as the date each year by which they should expect to have access to the annual financial information.

As noted above, the MSRB has requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

(b) The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which provides that MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act in that it serves to remove impediments to and help perfect the mechanisms of a free and open market in municipal securities and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. The information that underwriters would provide and that would be made available to the public with regard to the continuing disclosure undertakings of issuers and obligated persons would assist investors to understand whether and when they should expect to have access to key continuing disclosure information in the future. Investors and other market participants would be able to include such assessment of on-going access to information in the mix of factors upon which they may evaluate their investment decisions. The issuer and obligated person contact information would assist such persons to establish EMMA submission accounts and thereby promote more efficient and timely submissions of continuing disclosure documents.

4. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The additional items of information submitted by underwriters to the EMMA system for public dissemination would be available to all persons simultaneously. In addition to making such information available for free on the EMMA web portal to all members of the public, the MSRB would make such documents and information available by subscription on an equal and non-discriminatory basis. Further, the proposed rule change would apply equally to all underwriters. Specifically, the addition of these items of information to the existing EMMA primary market submission process would not compete with other information providers and, to the extent other information providers were to seek to make such information available to the public, such

providers could obtain the information from the MSRB through the subscription service on an equal and non-discriminatory basis. The proposed rule change also would not impose any additional burdens on competition among issuers of municipal securities since the proposed rule change does not impose any direct or indirect obligations on issuers but merely provides for disclosure of information by underwriters regarding continuing disclosure undertakings entered into under Exchange Act Rule 15c2-12.

5. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

In a notice published by the MSRB on January 31, 2008, the MSRB described its plan for implementing a continuing disclosure service that would be integrated into other services to be offered through EMMA.[4] In particular, the MSRB stated its plan to institute the continuing disclosure service to accept submissions of continuing disclosure information in a designated electronic format directly from issuers, obligated persons and their designated agents acting on their behalf. Among other things, the notice sought comment on whether underwriters for new issues should be required to submit to the MSRB information about (i) whether a continuing disclosure undertaking exists, (ii) the identity of any obligated persons other than the issuer, and (iii) the date identified in the continuing disclosure undertaking by which annual financial information is expected to be disseminated. Such information would be provided by underwriters through the same information submission process as, and simultaneously with, the information to be provided in connection with official statement submissions. The notice also asked whether other items of information should be required, such as the identify of designated agents for submitting continuing disclosure or the criteria for identifying obligated persons subject to the continuing disclosure obligations.

Four commentators provided comments on the issue of underwriter submission of information relating to the issuer's continuing disclosure obligations.[5] First Southwest supported

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4 *See* MSRB Notice 2008-05 (January 31, 2008).

5 *See* letters from Robert Donovan, Executive Director, Rhode Island Health and Educational Building Corporation, Stephen M. Fillebrown, Director of Research, Investor Relations and Compliance, NJ Health Care Facilities Financing Authority, and Charles A. Samuels and Meghan B. Burke, Mintz Levin Cohn Ferris Glovsky and Popeo PC, on behalf of National Association of Health and Educational Facilities Finance Authorities ("NAHEFFA"), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated March 3, 2008; Jack Addams, Managing Director, First Southwest Company ("First Southwest"), to Mr. Lanza, dated February 25, 2008; J. Foster Clark, President, National Association of Bond Lawyers ("NABL"), to Mr. Lanza, dated February 25, 2008; Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), to Mr. Lanza, dated February 25, 2008.

requiring the submission of the three items of information identified in the notice and stated that no other information in addition to the three items listed in the notice should be required. NABL, NAHEFFA and SIFMA provided comments on the items relating to identification of obligated persons and the date on which annual financial information is expected to be disseminated.

With respect to identification of obligated persons, NABL and SIFMA noted that only those obligated persons for whom financial or operating data is provided in the official statement are relevant. NABL suggested only requiring underwriters "to identify those persons expressly specified in the continuing disclosure undertaking who will be required to make continuing disclosure filings or to state that such persons will be determined by the functional descriptions contained in the continuing disclosure undertaking." SIFMA stated that a requirement for the underwriter to provide such information is "unnecessarily complicated since the official statement itself, which is on the portal, has a summary paragraph stating who will be filing continuing disclosure and where it will be filed."

The proposed rule change would require that underwriters provide the name of any obligated person (other than the issuer) that would be providing continuing disclosures pursuant to the continuing disclosure undertaking, rather than all obligated persons regardless of whether such obligated persons will be providing disclosure information. The MSRB believes that collecting the identity of obligated persons in a fielded manner that permits automated indexing and search functions is an important feature that would make the EMMA web portal considerably more useful for users. Such indexed information would assist EMMA web users in finding some or all of the offerings for a particular obligated person, thereby allowing the user to review the continuing disclosure undertakings that more fully spell out how the continuing disclosure obligations will be fulfilled.

With respect to the expected date of filing of annual financial information, NABL and SIFMA questioned the value of providing this information. NABL noted that the information is already provided in the official statement's description of the continuing disclosure undertaking and can become confusing if several obligated persons are required to file annual filings on different dates, while SIFMA noted that the information can be vague, often based on a stated period of time following the end of a fiscal year, and will become readily apparent based on the pattern of posting over time. NAHEFFA sought clarification of the purpose for requiring this date and requested that the data entry be flexible enough to reflect a deadline measured from the end of a fiscal year or other milepost, rather than a date certain.

The MSRB believes that there is considerable value in providing the expected date of submission of annual financial information in a manner that is extracted from the official statement. The MSRB would require that such information be provided in the form of a specific month and day. This would permit investors and the general public to readily identify when such disclosures should become available from each issuer or obligated person expected to provide the annual filings. Issuers and obligated persons would be able to update the timing requirement, as well as the identity of any obligated persons, through EMMA as appropriate.

6. Extension of Time Period for Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Federal Register Notice.

2. Notices requesting comment and comment letters.

3. Form G-32.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MSRB-2009-09)

Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-32, on Disclosures in Connection with Primary Offerings, Form G-32, and the Primary Market Disclosure and Primary Market Subscription Services of the MSRB's Electronic Municipal Market Access System (EMMA®)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 14, 2009, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change to require brokers, dealers and municipal securities dealers ("dealers") acting as underwriters, placement agents or remarketing agents for primary offerings of municipal securities ("underwriters") to provide to the Electronic Municipal Market Access system ("EMMA") and to make available on the EMMA web portal and through the EMMA primary market subscription service, information about whether the issuer or other obligated person has undertaken to provide continuing disclosures, the identity of any

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

obligated persons other than the issuer, and the timing by which such issuers or obligated persons have agreed to provide annual financial and operating data. The MSRB has requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

The text of the proposed rule change is available on the MSRB's web site at www.msrb.org/msrb1/sec.asp, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of amendments to Rule G-32 and Form G-32 to require underwriters of primary offerings of municipal securities to submit to the MSRB's EMMA system, as part of their primary offering submission obligation under Rule G-32(b), certain key items of information relating to continuing disclosure undertakings made by issuers and other obligated persons in connection with such

primary offerings. These items of information would be made available to the public through the EMMA web portal and are intended to inform investors in advance whether continuing disclosures will be made available with respect to a particular municipal security, from and about whom such continuing disclosures are expected to be made, and the timing by which such disclosures should be made available. The items of information regarding continuing disclosure undertakings to be provided by underwriters through Form G-32 would include:

- whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information as contemplated by Securities Exchange Act Rule 15c2-12;
- the name of any obligated person, other than the issuer of the municipal securities, that has or will undertake, or is otherwise expected to provide, continuing disclosure pursuant to the continuing disclosure undertaking;
- the date or dates identified in the continuing disclosure undertaking, pursuant to Securities Exchange Act Rule 15c2-12(b)(5)(ii)(C) or otherwise, by which annual financial information is expected to be submitted each year by the issuer and/or any obligated persons to the EMMA system; and
- contact information for a representative of the issuer and/or any obligated persons for purposes of establishing continuing disclosure submission accounts for such issuer and/or obligated persons in connection with their submissions to the EMMA system.

The underwriter would be required to provide information regarding whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information as contemplated by Securities Exchange Act Rule 15c2-12 by no later than the date of first execution of transactions in municipal securities sold in the primary offering. The remaining items of information would be required to be provided by the closing date of the primary offering. The name or names of obligated persons to be provided would be of the entity acting as an obligated person, not an individual at such entity, unless the obligated person is in fact an individual. The date by which the issuer or obligated person has undertaken to submit annual financial information would be submitted as a specific month and day, accurate as of the closing of the primary offering.[3] If annual financial information is expected to be submitted by more than one entity and such information is expected to be submitted on different dates, each such date would be provided matched to the appropriate issuer and/or obligated person. Underwriters currently are able to provide contact information for issuer or obligated person representatives with respect to current and past primary offerings through EMMA on a voluntary basis. The proposed rule change would require that such information be

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[3] For example, EMMA would not accept a submission of information stating that the annual financial information will be provided within a particular number of days after the end of the fiscal year since investors and other market participants may not have ready access to information about the issuer or obligated person's fiscal year. Simultaneous with this filing, the MSRB is filing with the Commission a proposed rule change that would amend EMMA's continuing disclosure service to, among other things, allow an issuer or obligated person to publish on the public EMMA web portal, on a voluntary basis, information about its undertaking to provide audited financial statements within 120 days after the end of the fiscal year. See SR-MSRB-2009- 10 (July 14, 2009).

provided as part of the underwriter's Form G-32 submission process for new primary offerings.

Until closing, the underwriter would be required to update promptly any information it has previously provided on Form G-32 which may have changed or to correct promptly any inaccuracies in such information, and would be responsible for ensuring that such information provided by it is accurate as of the closing date. So long as the underwriter has provided such information accurately as of the closing date, it would not be obligated to update the information provided if there are any subsequent changes to such information, such as additions, deletions or modifications to the identities of obligated persons or changes in the timing for providing annual financial information. Issuers and obligated persons will be able to make changes to such information through their submission accounts established in connection with EMMA's continuing disclosure service.

Information regarding whether an offering is subject to a continuing disclosure undertaking, the names of obligated persons and the dates for providing annual financial information would be displayed on the EMMA web portal and also would be included in EMMA's primary market disclosure subscription service.[4] These items are intended to provide investors and others with information on the expected availability of disclosures following the initial issuance of the securities. In particular, users of the EMMA web portal would be able to determine which obligated persons are expected to submit annual

[4] Contact information for issuers and obligated persons provided by underwriters would be used by the MSRB solely for purposes of inviting such issuers and obligated persons to establish submission accounts with the MSRB and will not be displayed on the EMMA web portal and will not be included in the primary market disclosure subscription service.

financial information, audited financial statements and material event notices on an on-going basis, as well as the date each year by which they should expect to have access to the annual financial information.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which provides that MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act in that it serves to remove impediments to and helps perfect the mechanisms of a free and open market in municipal securities and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. The information that underwriters would provide and that would be made available to the public with regard to the continuing disclosure undertakings of issuers and obligated persons would assist investors to understand whether and when they should expect to have access to key continuing disclosure information in the future. Investors and other market participants would be able to include such assessment of on-going access to information in the mix of factors upon which they may evaluate their investment decisions. The issuer and obligated person contact information would assist such persons to establish EMMA submission accounts and thereby promote more efficient and timely submissions of continuing disclosure documents.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The additional items of information submitted by underwriters to the EMMA system for public dissemination would be available to all persons simultaneously. In addition to making such information available for free on the EMMA web portal to all members of the public, the MSRB would make such documents and information available by subscription on an equal and non-discriminatory basis. Further, the proposed rule change would apply equally to all underwriters. Specifically, the addition of these items of information to the existing EMMA primary market submission process would not compete with other information providers and, to the extent other information providers were to seek to make such information available to the public, such providers could obtain the information from the MSRB through the subscription service on an equal and non-discriminatory basis. The proposed rule change also would not impose any additional burdens on competition among issuers of municipal securities since the proposed rule change does not impose any direct or indirect obligations on issuers but merely provides for disclosure of information by underwriters regarding continuing disclosure undertakings entered into under Exchange Act Rule 15c2-12.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In a notice published by the MSRB on January 31, 2008, the MSRB described its plan for implementing a continuing disclosure service that would be integrated into other

services to be offered through EMMA.[5] In particular, the MSRB stated its plan to institute the continuing disclosure service to accept submissions of continuing disclosure information in a designated electronic format directly from issuers, obligated persons and their designated agents acting on their behalf. Among other things, the notice sought comment on whether underwriters for new issues should be required to submit to the MSRB information about (i) whether a continuing disclosure undertaking exists, (ii) the identity of any obligated persons other than the issuer, and (iii) the date identified in the continuing disclosure undertaking by which annual financial information is expected to be disseminated. Such information would be provided by underwriters through the same information submission process as, and simultaneously with, the information to be provided in connection with official statement submissions. The notice also asked whether other items of information should be required, such as the identify of designated agents for submitting continuing disclosure or the criteria for identifying obligated persons subject to the continuing disclosure obligations.

Four commentators provided comments on the issue of underwriter submission of information relating to the issuer's continuing disclosure obligations.[6] First Southwest

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5 *See* MSRB Notice 2008-05 (January 31, 2008).

6 *See* letters from Robert Donovan, Executive Director, Rhode Island Health and Educational Building Corporation, Stephen M. Fillebrown, Director of Research, Investor Relations and Compliance, NJ Health Care Facilities Financing Authority, and Charles A. Samuels and Meghan B. Burke, Mintz Levin Cohn Ferris Glovsky and Popeo PC, on behalf of National Association of Health and Educational Facilities Finance Authorities ("NAHEFFA"), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated March 3, 2008; Jack Addams, Managing Director, First Southwest Company ("First Southwest"), to Mr. Lanza, dated February 25, 2008; J. Foster Clark, President, National Association of Bond Lawyers ("NABL"), to Mr. Lanza, dated February 25, 2008; Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and

(continued . . .)

supported requiring the submission of the three items of information identified in the notice and stated that no other information in addition to the three items listed in the notice should be required. NABL, NAHEFFA and SIFMA provided comments on the items relating to identification of obligated persons and the date on which annual financial information is expected to be disseminated.

With respect to identification of obligated persons, NABL and SIFMA noted that only those obligated persons for whom financial or operating data is provided in the official statement are relevant. NABL suggested only requiring underwriters "to identify those persons expressly specified in the continuing disclosure undertaking who will be required to make continuing disclosure filings or to state that such persons will be determined by the functional descriptions contained in the continuing disclosure undertaking." SIFMA stated that a requirement for the underwriter to provide such information is "unnecessarily complicated since the official statement itself, which is on the portal, has a summary paragraph stating who will be filing continuing disclosure and where it will be filed."

The proposed rule change would require that underwriters provide the name of any obligated person (other than the issuer) that would be providing continuing disclosures pursuant to the continuing disclosure undertaking, rather than all obligated persons regardless of whether such obligated persons will be providing disclosure information. The MSRB believes that collecting the identity of obligated persons in a

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(. . . continued)

Financial Markets Association ("SIFMA"), to Mr. Lanza, dated February 25, 2008.

fielded manner that permits automated indexing and search functions is an important feature that would make the EMMA web portal considerably more useful for users. Such indexed information would assist EMMA web users in finding some or all of the offerings for a particular obligated person, thereby allowing the user to review the continuing disclosure undertakings that more fully spell out how the continuing disclosure obligations will be fulfilled.

With respect to the expected date of filing of annual financial information, NABL and SIFMA questioned the value of providing this information. NABL noted that the information is already provided in the official statement's description of the continuing disclosure undertaking and can become confusing if several obligated persons are required to file annual filings on different dates, while SIFMA noted that the information can be vague, often based on a stated period of time following the end of a fiscal year, and will become readily apparent based on the pattern of posting over time. NAHEFFA sought clarification of the purpose for requiring this date and requested that the data entry be flexible enough to reflect a deadline measured from the end of a fiscal year or other milepost, rather than a date certain.

The MSRB believes that there is considerable value in providing the expected date of submission of annual financial information in a manner that is extracted from the official statement. The MSRB would require that such information be provided in the form of a specific month and day. This would permit investors and the general public to readily identify when such disclosures should become available from each issuer or obligated person expected to provide the annual filings. Issuers and obligated persons

would be able to update the timing requirement, as well as the identity of any obligated persons, through EMMA as appropriate.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB has requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2009-09 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2009-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2009-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy
Secretary

[7] 17 CFR 200.30-3(a)(12).

MSRB Notice 2008-05
(January 31, 2008)

MSRB Begins Planning for Continuing Disclosure Component of the New Electronic Municipal Market Access System (EMMA)

The Municipal Securities Rulemaking Board (the "MSRB") previously filed a proposed rule change with the Securities and Exchange Commission (the "SEC") to implement, on a pilot basis, an Internet-based portal (the "pilot portal") to provide free public access to official statements ("OSs") and advance refunding documents ("ARDs") submitted to the MSRB by underwriters of new issue municipal securities, together with real-time municipal securities trade price data from the MSRB's Real-Time Transaction Reporting System ("RTRS").[1] The pilot portal is a necessary first step toward establishing an "access equals delivery" standard for OS dissemination in the new issue municipal securities market, based on the "access equals delivery" rule for prospectus delivery for registered securities offerings adopted by the SEC in 2005.[2]

In its filing for the pilot portal, the MSRB noted that it would stand ready to expand the pilot to include secondary market disclosures (consisting of annual financial information and notices of specific material events provided by issuers and other obligated persons under Exchange Act Rule 15c2-12), should the SEC determine to modify Rule 15c2-12 to provide for a centralized electronic submission and dissemination model. In view of recent indications from the SEC that it expects to consider such a rule modification,[3] the MSRB has determined to take initial steps toward incorporating Rule 15c2-12 continuing disclosure submissions into its permanent on-line disclosure system, subject to final adoption of such modifications. The MSRB is seeking comment on certain basic elements relating to the incorporation of continuing disclosure into the MSRB's new disclosure utility. **Comments on this notice are due no later than February 25, 2008.**

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1 File No. SR-MSRB-2007-06. *See* MSRB Notice 2007-33 (November 15, 2007).

2 *See* Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (August 3, 2005) and Securities Act Rule 172, on delivery of prospectus, Rule 173, on notice of registration, and Rule 174, on delivery of prospectus by dealers and exemptions under Section 4(3) of the Securities Act of 1933, as amended. The MSRB has previously sought comment on the necessary rule changes to implement the "access equals delivery" standard. *See* MSRB Notice 2007-33 (November 15, 2007); MSRB Notice 2007-05 (January 25, 2007).

3 *See* letter from Christopher Cox, Chairman, SEC, to Frank Y. Chin, Chairman, MSRB, dated November 21, 2007, available at www.msrb.org/msrb1/Press/Release/CoxLetter--11-07.pdf (the "SEC Letter").

ELECTRONIC MUNICIPAL MARKET ACCESS (EMMA) SYSTEM

The permanent system, to be known as the MSRB's Electronic Municipal Market Access system (EMMA), will serve as a centralized Internet-based system for free real-time public access to all primary market, secondary market and trade price data for municipal securities submitted to the MSRB. EMMA will provide a free public dissemination utility for municipal securities disclosure filings to parallel the SEC's public dissemination function for the registered securities market through its Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.[4] In addition, EMMA will provide trade pricing information for municipal securities to parallel the price dissemination functions offered by the self-regulatory organizations for various other securities markets.[5] All submissions to the MSRB through EMMA, including submissions of OSs and ARDs by underwriters and their agents and submissions of continuing disclosures by issuers and their agents under continuing disclosure agreements, would be made without charge solely by electronic means.

EMMA will be implemented in stages, with the initial stage consisting of the pilot portal for OSs and ARDs expected to become operational on or about March 10, 2008, subject to final approval by the SEC. This OS/ARD pilot portal is expected to operate for a limited period as the MSRB transitions to the "access equals delivery" standard for OS dissemination in the municipal securities market. EMMA's "access equals delivery" component is currently planned to become operational during the summer of 2008, subject to final rulemaking by the MSRB and SEC approval. At that time, the "access equals delivery" component will provide for free electronic submissions of all OSs and ARDs to the MSRB and free public access to such documents through the public EMMA website. The continuing disclosure component of EMMA also would be implemented in stages, with an initial pilot stage during which submissions of continuing disclosure information could be made on a voluntary basis and such voluntary submissions would be made publicly available through the EMMA website.[6] This continuing disclosure pilot stage would operate for a limited period until the effective date of any SEC rulemaking under Rule 15c2-12 to provide for the MSRB's role as the central submission and dissemination utility

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4 The EMMA system's disclosure function will not operate in an identical manner to the EDGAR system due to considerable differences in the two marketplaces, necessitating differing approaches to indexing of and searching for disclosure information.

5 See, for example, fixed-income prices provided by the Financial Industry Regulatory Authority; equity prices provided by the New York Stock Exchange, NASDAQ and others.

6 Such voluntary filings would not substitute for any required filings under existing continuing disclosure undertakings but would be intended to provide submitters the opportunity to gain experience with the EMMA system prior to it becoming the central submission utility for continuing disclosure information.

for continuing disclosure information. At that time, EMMA's continuing disclosure component would become fully operational, providing for free electronic submissions of all continuing disclosures under Rule 15c2-12 to the MSRB and free public access to such disclosures through the public EMMA website, as described below.

CONTINUING DISCLOSURES

Under Exchange Act Rule 15c2-12(b)(5), an underwriter for a primary offering of municipal securities subject to the rule currently is prohibited from underwriting the offering unless the underwriter has determined that the issuer or an obligated person for whom financial information or operating data is presented in the final OS, or a designated agent, has undertaken in writing to provide certain items of information to the marketplace.[7] The items to be provided include: (A) annual financial information concerning obligated persons;[8] (B) audited financial statements for obligated persons if available and if not included in the annual financial information; (C) notices of certain events, if material;[9] and (D) notices of failures to provide annual financial information on or before the date specified in the written undertaking. The written agreement shall identify each obligated person or other person for whom information will is to be provided, either by name or by an objective criteria for selecting such person, and also shall specify (i) the type of information to be included in the annual financial information, (ii)

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7 Rule 15c2-12(f)(10) defines "obligated person" as any person, including an issuer of municipal securities, 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 sold in a primary offering (other than providers of bond insurance, letters of credit, or other liquidity facilities). The rule provides for more limited disclosures for obligated persons with no more than $10 million of outstanding municipal securities. *See* Rule 15c2-12(d)(2).

8 Rule 15c2-12(f)(9) defines "annual financial information" as financial information or operating data, provided at least annually, of the type included in the final OS with respect to an obligated person, or in the case where no financial information or operating data was provided in the final OS with respect to such obligated person, of the type included in the final OS with respect to those obligated persons that meet the objective criteria applied to select the persons for which financial information or operating data will be provided on an annual basis.

9 Such events consist of principal and interest payment delinquencies; non-payment related defaults; unscheduled draws on debt service reserves reflecting financial difficulties; unscheduled draws on credit enhancements reflecting financial difficulties; substitution of credit or liquidity providers, or their failure to perform; adverse tax opinions or events affecting the tax-exempt status of the security; modifications to rights of security holders; bond calls; defeasances; release, substitution, or sale of property securing repayment of the securities; and rating changes.

the accounting principles pursuant to which financial statements will be prepared and whether such financial statements will be audited, and (iii) the date on which the annual financial information will be provided.

If the SEC amends Rule 15c2-12 to provide that issuers file their continuing disclosures under the rule centrally with the MSRB in electronic form, the MSRB would expand EMMA's functionalities to also serve as the central electronic submission system for filing of all secondary market disclosures under amended Rule 15c2-12, at no charge to the submitter. The MSRB would integrate this collection of secondary market disclosure information with the MSRB's OS/ARD collection and RTRS data to provide a free comprehensive centralized public access portal for primary market disclosure information, secondary market disclosure information and transaction price information. EMMA would accept submissions of continuing disclosure information directly from issuers, obligated persons and their designated agents acting on their behalf. Continuing disclosures would be submitted to EMMA solely by electronic means in the same designated electronic format as will be required for submissions of OSs and ARDs by underwriters.[10] EMMA would be designed to accept such electronic submissions, including basic indexing information, either through a web-based interface or by computer-to-computer upload or data stream. In addition to making continuing disclosures available publicly through the EMMA public web site, such disclosures would be available on a real-time basis through paid subscriptions to the complete EMMA document collection for re-dissemination or other use by subscribers.

The MSRB expects to collect key indexing information for secondary market disclosures both at the time of the initial issuance of the securities and when such disclosures are submitted to the MSRB. At initial issuance, underwriters of new issue municipal securities would be required to provide the following items of information: (i) whether a continuing disclosure undertaking exists; (ii) the identity of any obligated persons other than the issuer; and (iii) the date identified in the undertaking by which annual financial information is expected to be disseminated. ***The MSRB seeks comments on these additional items of information to be submitted in connection with new issues. In addition, the MSRB seeks comments on whether other additional items of information should be required to be submitted by underwriters at the time of initial issuance, such as (among other things) the identity of any agents designated to provide continuing disclosure information or any criteria set out in the continuing disclosure undertaking for identifying obligated persons subject to the disclosure obligations pursuant to such undertaking.***

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[10] The MSRB has proposed that submissions must be in an electronic format acceptable to the MSRB, must be word-searchable, and must permit the document to be saved, viewed, printed and retransmitted by electronic means using software generally available for free or on a commercial basis to non-business computer users. Documents in portable document format that are word-searchable and may be saved, viewed, printed and retransmitted by electronic means would be deemed to be in a designated electronic format. *See* MSRB Notice 2007-33 (November 15, 2007).

At the time of submission of an item of continuing disclosure, specific indexing information relating to such item would be collected from the submitter. Such information would be designed to accurately identify the category of information being provided, such as annual financial information, audited financial statements, material event notice (including designation of which category or categories of events), or failure to make timely filing of annual financial information. In addition, such information would be designed to accurately identify the issues or specific securities, as well as the obligated person (if applicable), to which such disclosure applies. Such information could be provided either through data files submitted to EMMA's computer-to-computer interface or through data-entry screens on the EMMA web interface.

Many issuers currently allow continuing disclosure information to be provided through designated agents. The MSRB intends on providing an issuer with the ability to control through EMMA who may act as a submission agent on its behalf. ***The MSRB seeks comments on whether the MSRB should accept submissions from a third party with respect to an issuer's securities only if the issuer has affirmatively designated to EMMA that such third party is authorized to act as its agent, or whether submissions from any registered EMMA user should be accepted on behalf of an issuer unless the issuer has affirmatively indicated that it wishes to take control over which parties can submit on its behalf.***

SUBMISSION PROCESS AND EMMA SUBSCRIPTIONS

The MSRB previously stated that EMMA would be designed to permit underwriters to designate third-party submission agents to act on their behalf with respect to their document and related information submission requirements.[11] In addition to using an upgraded version of the MSRB's current web-based electronic submission interface for individual documents, underwriters and their agents will be able to establish computer-to-computer data connections with EMMA to submit the documents and/or related information directly to EMMA. This direct document and data submission feature also would be available with respect to submissions of continuing disclosure information on behalf of issuers and obligated persons. In addition, the MSRB has noted that it will offer real-time subscriptions to EMMA's document collection and related information, which will be designed to provide real-time access to such documents and information as they are submitted and processed. The MSRB's goal is to ensure an efficient process for submission of documents and information to EMMA while making available real-time subscription products at a reasonable cost with a view to promoting broad dissemination of the EMMA information collection and encouraging market-based approaches to value-added services designed to meet the needs of investors and other market participants. The MSRB expects to begin soliciting feedback from potential submitters and subscribers to EMMA in the near future.

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11 *See* MSRB Notice 2007-5 (January 25, 2007).

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Comments should be submitted by no later than February 25, 2008, and may be directed to Ernesto A. Lanza, Senior Associate General Counsel. Written comments will be available for public inspection at the MSRB's public access facility and also will be posted on the MSRB web site.[12]

January 31, 2008

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[12] All comments received will be made publicly available without change. Personal identifying information, such as names or e-mail addresses, will not be edited from submissions. Therefore, commentators should submit only information that they wish to make available publicly.

Alphabetical List of Comment Letters on MSRB Notice 2008-05 (January 31, 2008) relating to underwriter submission of information relating to issuer's continuing disclosure obligations

1. First Southwest Company: Letter from Jack Addams, Managing Director, dated February 25, 2008
2. National Association of Bond Lawyers: Letter from J. Foster Clark, President, dated February 25, 2008
3. National Association of Health and Educational Facilities Finance Authorities: Letter from Robert Donovan, Executive Director, Rhode Island Health and Educational Building Corporation, Stephen M. Fillebrown, Director of Research, Investor Relations and Compliance, NJ Health Care Facilities Financing Authority, and Charles A. Samuels & Meghan B. Burke, Mintz Levin Cohn Ferris Glovsky and Popeo PC, dated February 28, 2008
4. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated February 25, 2008

First Southwest Company

325 North St. Paul Street
Suite 800
Dallas, Texas 75201-3852

214-953-4102 Direct
214-953-4050 Fax

Jack Addams
Managing Director
Public Finance

jaddams@firstsw.com

February 25, 2008

Mr. Ernesto A. Lanza
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2008-05 (January 31, 2008) – MSRB Begins Planning for Continuing Disclosure Component of the New Electronic Municipal Market Access System (EMMA)

Dear Mr. Lanza:

On behalf of First Southwest Company (First Southwest), we appreciate the opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) Notice 2008-05. First Southwest compliments the MSRB on its work to make the municipal marketplace more transparent and efficient.

With regard to the proposed notice as referenced above and the online EMMA system, First Southwest supports the MSRB's endeavors to make municipal disclosure easier for underwriters of municipal bonds to comply with SEC Rule 15c2-12, as amended (the Rule). In addition, as a broker dealer with a substantial financial advisory practice, we support technological initiatives that assist issuers with submission of annual disclosure documents as well as material events.

First, the MSRB has asked whether the items underwriters are required to report to the EMMA system upon initial issuance of bonds, "(i) whether a continuing disclosure undertaking exists; (ii) the identity of any obligated persons other than the issuer; and (iii) the date identified in the undertaking by which annual financial information is expected to be disseminated" is sufficient or whether additional items of information should be submitted. First Southwest believes that these three pieces of information are the impetus for the undertaking; and therefore, no additional items need to be reported. In addition, underwriters are already responsible for these items prior to buying or trading municipal bonds; and therefore, are inline with existing obligations under the Rule.

Second, First Southwest would encourage the MSRB to define real-time as "such disclosures would be available on a real-time basis through paid subscriptions to the complete EMMA document collection for re-dissemination or other use by subscribers." Would real-time be defined as sending batches of information at the end of the day, or would real-time be defined as an alternate timeframe, such as that required for reporting trades?

Third, although the EMMA system will be designed to replace the four nationally recognized municipal securities information repositories (NRMSIRs), the notice does not indicate whether EMMA will also replace the State Information Depositories (SIDs). The SIDs are useful

reference tools for issuers and underwriters of municipal bonds in states where they exist. First Southwest would support their continued existence.

In addition, although one central repository for filing of continuing disclosure documents would be more efficient than filing this information with four NRMSIRs, would historical documents be brought over from these repositories or would EMMA only contain documents filed beginning at a certain date in the future?

Finally, the MSRB seeks comment on whether the issuer has to affirmatively designate to EMMA whether a third party is authorized to act as the issuer's agent or if any registered EMMA user could submit disclosure documents on behalf of the issuer. First Southwest would agree that an issuer must make this designation to ensure only applicable and appropriate documentation related to an issuer's securities is provided.

Again, we appreciate the opportunity to provide comments on this important issue facing the municipal bond market.

Respectively,

Jack Addams
Managing Director
Public Finance

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February 25, 2008

Ernesto A. Lanza
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: **MSRB Notice 2008-05 (January 31, 2008)**
MSRB Begins Planning for Continuing Disclosure Component of the New Electronic Municipal Market Access System (EMMA)

Dear Mr. Lanza:

The National Association of Bond Lawyers ("NABL") respectfully submits the enclosed response to the Municipal Securities Rulemaking Board ("MSRB") solicitation of comments on MSRB Notice 2008-05, dated January 31, 2008 (the "Notice"), regarding MSRB's planning for the continuing disclosure component of the new electronic municipal market access system ("EMMA"). The comments were prepared by an *ad hoc* subcommittee of NABL's Securities Law and Disclosure Committee, as listed in Exhibit I.

In the Notice, the MSRB requests specific comments regarding the continuing disclosure component of EMMA, and NABL has provided comments in response to certain of these requests.

NABL exists to promote the integrity of the municipal market by advancing the understanding of and compliance with the law affecting public finance. A professional association incorporated in 1979, NABL has approximately 3,000 members and is headquartered in Chicago.

If you have any questions concerning the comments, please feel free to contact me at 205/226-3482 (fclark@balch.com) or Elizabeth Wagner, Director of Governmental Affairs at 202/682-1498 (ewagner@nabl.org).

National Association
of Bond Lawyers

Thank you in advance for your consideration of these comments with respect to this important development in the municipal securities industry.

Sincerely,



J. Foster Clark

Enclosures

cc: Teri M. Guarnaccia
Curt Gwathney
William L. Hirata
Michael T. Kersten
Andrew Kintzinger
John M. McNally
Jeffrey C. Nave
Rebecca J. Olsen
Joseph E. Smith
Walter J. St. Onge III
Fredric A. Weber

National Association *of* Bond Lawyers

COMMENTS
OF THE
NATIONAL ASSOCIATION OF BOND LAWYERS
REGARDING
MSRB NOTICE 2008-05

MSRB BEGINS PLANNING FOR CONTINUING DISCLOSURE COMPONENT OF THE NEW ELECTRONIC MUNICIPAL MARKET ACCESS SYSTEM (EMMA)

The following comments are submitted to the Municipal Securities Rulemaking Board ("MSRB") on behalf of the National Association of Bond Lawyers ("NABL") relating to the MSRB Notice 2008-05—MSRB Begins Planning for Continuing Disclosure Component of the New Electronic Municipal Market Access System (EMMA), dated January 31, 2008 (the "Notice"). The comments were prepared by an *ad hoc* subcommittee of the NABL Securities Law and Disclosure Committee.

NABL welcomes this opportunity to respond to the MSRB's continuing initiative to develop an electronic system for dissemination of municipal securities disclosure documents and focuses its comments on those particular questions to which it believes it has relevant expertise. NABL has two general comments about the Notice as well as several specific comments. The headings shown below under NABL's specific comments correspond to the MSRB's requests in the Notice.

1. General Comment—Availability of Continuing Disclosure Filings on EMMA.

NABL asks that the MSRB clarify its plans regarding the availability of continuing disclosure filings on EMMA. Will all content be free? Will only portions of the content be free? In the Notice, the MSRB makes several statements about the availability of continuing disclosure filings on EMMA. The Notice states that "EMMA's continuing disclosure component would . . . [provide] for free electronic submissions of all continuing disclosures under Rule 15c2-12 to the MSRB and free public access to such disclosures through the public EMMA website . . . ." The Notice also states that "[i]n addition to making continuing disclosures available publicly through the EMMA public web site, such disclosures would be available on a real-time basis through paid subscriptions to the complete EMMA document collection for re-dissemination or other use by subscribers." Further, the Notice states that "[i]n addition, the MSRB has noted that it will offer real-time subscriptions to EMMA's document collection and related information, which will be designed to provide real-time access to such documents and information as they are submitted and processed. The MSRB's goal is to ensure an efficient process for submission of documents and information to EMMA while making available real-time subscription products at a reasonable cost with a view to promoting broad dissemination of the EMMA information collection and encouraging market-based approaches to value-added services designed to meet the needs of investors and other market participants." When read together, these statements seem to indicate that only paid subscribers would have immediate access to all of EMMA's documents. Is this the MSRB's intent? Or is the MSRB's intent that all would have immediate

access, but that paid subscribers would have immediate receipt of the information (through an RSS technology or otherwise)?

2. General Comment—Continuing Disclosure Filings for Previously Issued Municipal Securities on EMMA.

NABL also asks that the MSRB clarify its plans regarding continuing disclosure filings with respect to previously issued municipal securities. In the Notice, the MSRB indicates that it expects to collect information relating to "new issue municipal securities," which suggests the MSRB will not accept continuing disclosure filings with respect to previously issued municipal securities. Will the MSRB accept filings with respect to previously issued municipal securities either because they are submitted voluntarily by an issuer or because an issuer is required to submit them pursuant to a continuing disclosure agreement?

3. Specific Comments.

The MSRB seeks comments on these additional items of information to be submitted in connection with new issues. In addition, the MSRB seeks comments on whether other additional items of information should be required to be submitted by underwriters at the time of initial issuance, such as (among other things) the identity of any agents designated to provide continuing disclosure information or any criteria set out in the continuing disclosure undertaking for identifying obligated persons subject to the disclosure obligations pursuant to such undertaking.

In the Notice, the MSRB states that, at the time of initial issuance "underwriters of new issue municipal securities would be required to provide the following items of information: (i) whether a continuing disclosure undertaking exists; (ii) the identity of any obligated persons other than the issuer; and (iii) the date identified in the undertaking by which annual financial information is expected to be disseminated."

NABL has no comments on the first requested item of information but would qualify the second requested item of information. Instead of having underwriters identify "obligated persons" (a term that has a technical meaning under the United States Securities and Exchange Commission's Rule 15c2-12), NABL recommends that underwriters be required only to identify those persons expressly specified in the continuing disclosure undertaking who will be required to make continuing disclosure filings or to state that such persons will be determined by the functional description contained in the continuing disclosure undertaking (for example, participants in a pooled bond financing satisfying certain criteria in the continuing disclosure undertaking).

Rule 15c2-12 does not require that continuing disclosure filings be made regarding all obligated persons, but only regarding those obligated persons about whom financial information or operating data is included in an offering document. In addition, NABL is concerned that this second requested item of information could be viewed as additional certification by underwriters beyond the obligations prescribed by Rule 15c2-12(b)(5)(i) that underwriters "reasonably determine" that a continuing disclosure undertaking conforming to the Rule has been executed.

With respect to the third item of information, NABL requests that the MSRB clarify why it plans to require that underwriters provide to the MSRB the date identified in the continuing

disclosure undertakings by which annual financial information is expected to be disseminated. This information already can be found in the offering documents to which such undertakings relate. Moreover, if more than one person is specified in the undertaking that will be required to make continuing disclosure filings or if reporting is required more frequently than annually, financial information dissemination will be required on multiple dates.

With respect to other additional items of information that should be required to be submitted by underwriters at the time of initial issuance, NABL does not believe that underwriters should be asked to identify agents designated to provide continuing disclosure information. However, NABL recommends that the MSRB consider requiring underwriters to submit CUSIP numbers at the time of initial issuance, so that users of EMMA can search for information by issuer name or CUSIP number. NABL also recommends that the MSRB solicit input from the investor community regarding the desirability of requiring underwriters to submit the name and a unique identification number for those obligated persons about whom financial information or operating data is included in an offering document (for example, an employer identification number) at the time of initial issuance, so that users of EMMA can search for information by obligated persons identified in filings.

The MSRB seeks comments on whether the MSRB should accept submissions from a third party with respect to an issuer's securities only if the issuer has affirmatively designated to EMMA that such third party is authorized to act as its agent, or whether submissions from any registered EMMA user should be accepted on behalf of an issuer unless the issuer has affirmatively indicated that it wishes to take control over which parties can submit on its behalf.

NABL respectfully defers to the issuer community on the issue of whether the MSRB should accept submissions from third parties with respect to an issuer's securities.

National Association *of* Bond Lawyers

EXHIBIT I

NABL SECURITIES LAW AND DISCLOSURE COMMITTEE
AD HOC SUBCOMMITTEE MEMBERS
MSRB NOTICE 2008-05

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NAHEFFA

National Association of Health and Education Facilities Finance Authorities

March 3, 2008 **[By Mail and e-Mail]**

Mr. Ernesto A. Lanza
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314
Attention: Rulemaking/Policy

RE: Comments on January 31, 2008 MSRB Notice 2008-05

Dear Mr. Lanza:

The National Association of Health and Educational Facilities Finance Authorities (NAHEFFA) appreciates the opportunity to comment on MSRB Notice 2008-05 relating to the new Electronic Municipal Market Access System ("EMMA"). NAHEFFA represents statewide issuers of tax-exempt bonds for non-profit healthcare, higher education and other charitable purposes.

We generally support the concept of expanding the existing pilot to contain a continuing disclosure component, as described in your notice. We need details about the operation of the system before we can fully comment or determine our support. The following are preliminary comments and questions.

First, it is important that the SEC modify Rule 15c2-12 to make clear that submission of information to EMMA, even during the pilot period, satisfies all filing obligations and that issuers will not be required also to make submissions through the NRMSIRs. Second, the provisions of the SEC Rule 15c2-12 should be limited to allowing electronic submission of disclosure documents to one central location and not be expanded for other purposes, including to further the SEC's announced interest in increasing regulation of issuers.

We support a requirement that there be an explicit designation by the issuer of a third party who may act as a submission agent on its behalf. It is important that issuers maintain control of who may file such submissions on their behalf and that MSRB be clear that specific authorization has been provided.

There are several matters raised in the notice which require clarification. For example, the notice states that underwriters will be required to provide certain information at initial issuance, including without limitation "the date on which the annual financial information will be provided." We request that the MSRB clarify the purpose of such information and, if such information is to reflect the obligations under the continuing disclosure agreement, that the data entry be flexible enough to reflect a deadline such as within a certain number of days (i.e., 180) from the end of the fiscal year, rather than a date certain. In addition, please clarify whether EMMA would accommodate regular, periodic filings in addition to annual ones, whether an obligation in the continuing disclosure agreement or elsewhere, such as a commitment of a borrower in a conduit financing to provide quarterly or monthly financial results.

Mr. Ernesto A. Lanza
March 3, 2008

Our conceptual support for EMMA is based on the understanding that it will not require additional cost to prepare data submissions. In that regard, the statement in the notice that "information could be provided either through data files submitted to EMMA's computer-to-computer interface or through data-entry screens on the EMMA web interface" raises the question whether special software or other arrangements will need to be purchased by issuers. How accessible is the interface? Are standard e-mail systems capable of this interface or are there additional buried transaction costs which should be made clear? Please also confirm that issuers will receive electronic confirmation that disclosure materials were received by EMMA.

Finally, the notice states that "in addition to making continuing disclosures available publicly through the EMMA website, such disclosures would be available on a real-time basis through paid subscriptions to the complete EMMA document collection for re-dissemination or other use by subscribers." This raises the issue of two different levels of access to this data. We request information about the nature of the special access that your real-time subscribers will obtain and how that differs from the benefits to the general public. How many hours or days gap will there be between access by the special paid subscribers and the general public? We believe that issuers as well as private sector participants ought to have essentially the same benefit from EMMA without having to pay MSRB for a subscription.

We appreciate the opportunity to comment and look forward to working closely with MSRB. We believe that it is critical that MSRB make a special effort to reach out to issuers on the continuing development of this system.

On behalf of NAHEFFA:

RD/CAS

Robert Donovan
Executive Director
Rhode Island Health and Educational Building Corporation
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SMF/CAS

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cc: Lynnette Kelly Hotchkiss, Esquire

SIFMA
Securities Industry and Financial Markets Association

February 25, 2008

Ernesto A. Lanza
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, Virginia 22314

Re: MSRB Notice 2008-05: Plans to Establish an Electronic Access System for Continuing Disclosure

Dear Mr. Lanza:

The Securities Industry and Financial Markets Association ("Association")[1] appreciates this opportunity to respond to Notice 2008-05 issued by the Municipal Securities Rulemaking Board ("MSRB") on January 31, 2008 ("Notice") in which the MSRB requests comment on its proposal to expand the pilot portal being developed by the MSRB, in connection with official statements and advance refunding documents, to include secondary market submissions of continuing disclosure in the event the Securities and Exchange Commission ("SEC") amends Rule 15c2-12 to provide for a centralized electronic submission and dissemination model.

The Association fully supports the development by the MSRB of a pilot portal, as an internet-based public access portal, to provide free access to secondary market disclosures (consisting of annual financial information, notices of specific material events and related filings pursuant to Rule 15c2-12). The pilot portal, along with the pilot portal for primary market disclosure, would be in anticipation of a permanent system, to be known as the MSRB's Electronic Municipal Market Access system ("EMMA"). The Association further wishes to express its appreciation to the MSRB for its efforts to create a single electronic portal for both primary and secondary market disclosure, which we believe will improve market efficiency and facilitate comprehensive disclosure in the municipal securities markets. The MSRB is to be congratulated for its rapid response to recommendations from the Association and other market participants

[1] The Association, or "SIFMA," brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

that there be a single location for free access by investors of both primary and secondary market information.

Submission of Indexing Information

The MSRB seeks comment on the proposal in the Notice that underwriters submit certain indexing information at the time of initial issuance of municipal securities. At the time of initial issuance, underwriters would be required to provide the following items of information: (i) whether a continuing disclosure undertaking exists, (ii) the identity of any obligated person other than the issuer, and (iii) the date identified in the undertaking by which annual financial information is expected to be disseminated.

The Notice does not identify the time or format required for this information other than that it would be at the time of initial issuance. Presumably, the information would be part of the new G-32 form submitted when the official statement is filed with EMMA. The second item, which is the identification of any obligated person, may, in some cases, have little value because a financing can have numerous obligated persons, but continuing disclosure is not required with respect to an obligated person unless information about the obligated person is material and the official statement thus contains financial or operating data about the obligated person. If the reason for this information is for the portal site to have a line item disclosing obligated persons about whom continuing disclosure will be provided, it should also be recognized that many obligated persons file on EDGAR pursuant to the Securities Exchange Act of 1934, and the EDGAR filing will normally satisfy the continuing disclosure agreement. Attempting to disclose which obligated persons can be expected to file on EMMA seems unnecessarily complicated since the official statement itself, which is on the portal, has a summary paragraph stating who will be filing continuing disclosure and where it will be filed. The continuing disclosure agreement, in full, is also usually in the official statement.

The third item of information, stating the date by which annual financial information is expected to be disseminated is likely to be vague and, thus, not useful. Typically, the continuing disclosure agreement has a formula, such as "within 90 days after the close of the issuer's fiscal year." We doubt this statement has much utility. Once the annual information is filed on EMMA, a pattern will develop that will indicate to investors when the information is likely to be filed each year.

Designated Agents

The MSRB seeks comment on whether the MSRB should accept submissions from a third party with respect to an issuer's securities only if the issuer has affirmatively designated to EMMA that such third party is authorized to act as its agent, or whether submissions from any registered EMMA user should be accepted on behalf of an issuer unless the issuer has affirmatively indicated that it wishes to take control over which parties can submit on its behalf.

The Association is concerned that if EMMA does not accept continuing disclosure from a third party, unless an issuer specifically authorizes the third party to EMMA, there will be cases of issuer inaction preventing timely disclosure. Many issuers appoint dissemination agents or rely on obligated persons to submit continuing disclosure. Posting disclosure should not be delayed by a requirement of authorization by an issuer, who is not involved in making continuing disclosure, because a delay in authorization would create an increased likelihood of a failure to provide information on or before the date specified in the continuing disclosure agreement and, thus, a new notice required of a failure to comply as well as disclosure in a subsequent official statement of a failure to comply. We believe the current practice set forth in the standard Municipal Secondary Market Disclosure Information Cover Sheet should be continued, which requires the person/entity submitting information to represent affirmatively that the person is authorized to submit the information.

We appreciate the opportunity to comment on the proposed pilot portal for secondary market disclosure. If you have any questions concerning these comments, or would like to discuss these comments further, please feel free to contact the undersigned at 212.313.1130 or via email at lnorwood@sifma.org.

Respectfully,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Securities Industry and Financial Markets Association***
Municipal Executive Committee
Municipal Policy Committee
Municipal Legal Advisory Committee
Municipal Operations Committee
Municipal Syndicate & Trading Committee
Municipal Credit Research, Strategy and Analysis Committee
Municipal Access Equals Delivery Task Force

EXHIBIT 3

FORM G-32[1]
(Items to be provided pursuant to Rule G-32(b)(vi)(A))

I. **Underwriter/Submitter Identification**
- A. Name of managing underwriter
- B. MSRB number of managing underwriter
- C. Name of submitter company, if different than managing underwriter
- D. MSRB number of submitter company, if different than managing underwriter
- E. Name of individual making submission
- F. Contact information for individual making submission

II. **Submission Information**
- A. Submission type (primary market disclosure or advance refunding submission)
- B. Submission identifier, only for supplements, modifications or amendments of prior submission

III. **Information for Offering**
- A. Offering type (debt or municipal fund security)
- B. Underwriting spread/agency (placement) fee, for negotiated offerings if not included in official statement
- C. Underwriting assessment exemption/discount indicator, if applicable
- D. Notice of cancellation of offering, if applicable

IV. **Information for Each Issue in Offering Underwritten by Underwriter**
- A. Issue type (new issue, remarketing)
- B. Security type (CUSIP-based issue, commercial paper with 6-digit CUSIP information, ineligible for CUSIP number assignment)
- C. Full issuer name
- D. Full issue description
- E. State, only for issues ineligible for CUSIP number assignment and municipal fund securities
- F. Issue dated date
- G. Closing date
- H. Original dated date, for remarketings with new dated date assigned
- I. Original nine-digit CUSIP number of remarketed issue, only if new CUSIP numbers assigned to a remarketed issue
- J. Six-digit CUSIP number, for commercial paper issues

V. **Information for Each Security in Issue Underwritten by Underwriter**
- A. Nine-digit CUSIP number, except issues with no CUSIP numbers, issues of commercial paper, or issues of municipal fund securities
- B. Maturity date

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[1] Underlining indicates additions.

C. Interest rate
D. Maturity principal amount, except issues of commercial paper or issues of municipal fund securities
E. Initial offering price or yield, except issues of commercial paper or issues of municipal fund securities
F. Partial underwriting indicator, if less than full principal amount of security is underwritten by underwriter
G. Security dated date, only for securities ineligible for CUSIP number assignment and if different from issue dated date

VI. **Information for Issue Not Underwritten by Underwriter (if any)**
A. Nine-digit CUSIP number for latest maturity of issue, only if a different underwriter underwrote an entire issue that is part of the offering

VII. **Advance Refunding Information**
A. Advance refunding indicator
B. Original nine-digit CUSIP numbers of refunded securities
C. Maturity date of refunded securities
D. Refunded issuer name, only if refunded issue has no CUSIP numbers
E. Refunded issuer's state, only if refunded issue has no CUSIP numbers
F. Refunded issue description, only if refunded issue has no CUSIP numbers
G. Newly assigned nine-digit CUSIP numbers of refunded securities, if any
H. Newly assigned nine-digit CUSIP numbers of unrefunded balances, if any

VIII. **Document Information**
A. Document type (official statement, preliminary official statement, advance refunding document)
B. Date document received from issuer
C. Notice of OS unavailability under Rule G-32(b)(i)(B)(2)(A) or (b)(i)(C)(1), if applicable
D. Notice of no OS submission for limited offering under SEC Rule 15c2-12(d)(1)(i), if applicable
E. Contact information for obtaining limited offering OS, if applicable
F. Notice of POS unavailability under Rule G-32(b)(i)(D)(2), if applicable

IX. Continuing Disclosure Information
A. Continuing disclosure undertaking indicator
B. Obligated persons other than issuer, if any (for issue subject to SEC Rule 15c2-12)
C. Date annual financial information expected to be submitted (for issue subject to SEC Rule 15c2-12)
D. Issuer account set-up contact information (if issuer account not yet established and if issue subject to SEC Rule 15c2-12)

PRESS RELEASE

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Release Date: August 18, 2009

Contact: **Jennifer A. Galloway, Chief Communications Officer**
(703) 797-6600
jgalloway@msrb.org

THE MUNICIPAL SECURITIES RULEMAKING BOARD'S EMMA WEBSITE OFFERS VAST RESOURCES FOR JOURNALISTS
Reporters Can Find Government Financial Documents in a Single Location

Alexandria, VA–For reporters covering state and local government, accessing relevant financial information has often been a cumbersome and time-consuming process. However, a new online service operated by the Municipal Securities Rulemaking Board (MSRB) now provides a centraliz electronic repository for documents and data related to the bonds issued by municipalities – information that includes financial data and material disclosures of interest to investors and the general public.

The MSRB's Electronic Municipal Market Access (EMMA) website provides access, free of charge, disclosure documents associated with municipal bonds, as well as real-time trade data for approximately 1.2 million outstanding municipal bonds, as well as current interest rates for aucti rate securities and variable rate demand obligations. EMMA's Education Center provides useful information about investing in municipal bonds and 529 college savings plans and a Glossary of Municipal Securities Terms. Reporters can also sign up to receive automatic alerts from EMMA v documents are posted for specific bond issues.

How Journalists Can Use EMMA

• State and Local Government Reporters – Review continuing disclosures about the financial or operating condition of state and local municipal bond issuers, including public utilities and school districts. In addition, the MSRB makes disclosures of political contributions by municipal bond de to municipal issuer officials available on the MSRB's main website. Under MSRB rules, municipal dealers could be banned from business with issuers based on political contributions to issuer offi

• Utilities Reporters – Review disclosures and trade information for local utility bond issues.

• Education Reporters – Find disclosures and other information for school bond issues.

• Personal Finance Reporters – Learn about investing in municipal bonds and 529 college saving in EMMA's Education Center; view documents associated with municipal securities and see real-t trade price data to compare bonds

• Financial Reporters -- Access real-time trade data, daily and annual market statistics and infor about auction rate securities and variable rate demand obligations.

Background on EMMA

While the MSRB has operated EMMA in various pilot stages since March 2008, in July 2009 the M

launched the key feature of providing electronic access to market-wide continuing disclosure documents. This important information, which includes annual financial statements and notices c material events, reflects the financial or operating condition of the issuer and events occurring throughout the life of a bond that can affect the ability of an issuer to repay its bonds and the va the bond, among other things. Previously these documents were collected by private enterprises charged investors for the information.

EMMA, at emma.msrb.org, also collects and makes available to investors hundreds of thousands municipal bond offering documents, the prices of millions of municipal trades, as well as interest and auction results for auction rate securities, interest rates for variable rate demand obligations market statistics and educational material about municipal bonds.

Training sessions on EMMA are available by contacting thanachi@msrb.org.

* * *

The Municipal Securities Rulemaking Board (MSRB) was established in 1975 by Congress to deve rules regulating securities firms and banks involved in underwriting, trading, and selling municip securities. The Board also operates information systems, including the Electronic Municipal Mark Access (EMMA) system, designed to promote transparency and access to information. The MSRB conducts extensive outreach and education. The Board is composed of members from the munic securities dealer community and the public, and is charged with protecting investors and promot fair and efficient market. The Board is a self-regulatory organization that is subject to oversight Securities and Exchange Commission (SEC).

# # #

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Typical Provisions from Bond Purchase Agreement requiring Disclosure of Events during Underwriting Period

The Preliminary Official Statement as of the date thereof and the Official Statement as of the date hereof (but in both instances not including information in such documents under the heading "Description of the Series 2009 Bonds – Book-Entry Only System") do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. If, after the date of this Purchase Contract and until the earlier of (i) ninety (90) days from the end of the "underwriting period" (as defined in SEC Rule 15c2-12) or (ii) the time when the Official Statement is available to any person from a nationally recognized repository, but in no case less than 25 days following the end of the underwriting period, any event shall occur which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City shall notify the Underwriters thereof, and, if in the opinion of the Underwriters, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the City will at its own expense forthwith prepare and furnish to the Underwriters a sufficient number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriters) which will supplement or amend the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at such time, not misleading.

Typical Provisions from Remarketing Agreement requiring Disclosure

If, at any time during the term of this Agreement, any event known to the Issuer relating to or affecting the Bonds, the Issuer, the Liquidity Facility, the Liquidity Facility Provider, the Bond Ordinance or this Agreement shall occur which might affect the correctness or completeness of any statement of a material fact contained in the Official Statement, the Issuer will promptly notify the Remarketing Agent in writing of the circumstances and details of such event. The Issuer agrees to prepare an amendment or supplement to the Official Statement, at its own expense, if in the judgment of the Issuer or the Remarketing Agent such amendment or supplement is necessary to ensure that at all times the Official Statement, as amended or supplemented, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

In connection with the remarketing of the Bonds as a result of, or in anticipation of, (i) an expiration, termination, or replacement of any Liquidity Facility, or (ii) any conversion to an interest rate other than the Weekly Rate, the Issuer shall prepare or cause to be prepared any disclosure documents (including continuing disclosure undertakings required by the rules and regulations of the Securities and Exchange Commission) which in the reasonable opinion of the Remarketing Agent in consultation with the Issuer are necessary or desirable. All costs incurred in connection with the preparation of such disclosure documents shall be borne by the Issuer.

PRESENTATION TO
INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION
OCTOBER 20, 2009

MUNICIPAL BOND POST-ISSUANCE: CONTINUING COMPLIANCE AND DISCLOSURE REQUIREMENTS

PERSPECTIVE OF COUNSEL FOR CONDUIT BORROWERS AND NOT-FOR-PROFIT USERS OF BOND FINANCED FACILITIES

-- Bruce Giles-Klein
Greenberg Traurig, P.A.

I. Post-Issuance Tax Compliance: Issues for Conduit Borrowers and Not-for-Profit Users

A. Restrictions on Investment of Bond Proceeds
B. Time Limitations on Expenditure of Bond Proceeds
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D. Prohibitions and Limits on Categories of Expenditure
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A. Obligated Persons under Rule 15c2-12
B. Annual Financial Information
C. Required Continuing Disclosure of Material Events
D. Compliance Training

(___)

ARBITRAGE CERTIFICATE

I certify the following with respect to the $[PRINCIPAL AMOUNT] Host City, Florida Revenue Bonds (ABC Not-for-Profit School, Inc. Project), Series 200_ (the "Bonds"), to be issued today by the Host City, Florida (the "Issuer") under a Trust Indenture dated as of _____ 1, 200_ (the "Indenture") between the Issuer and Trustee Bank, N.A., as trustee (the "Trustee"). I am an officer of the Issuer charged with others with the responsibility for issuing the Bonds. Terms not otherwise defined in this certificate will have the meanings given to them in the Indenture.

1. Purpose of the Bonds. The Issuer is issuing the Bonds to make a loan (the "Loan") to ABC Not-for-Profit School, Inc., a Florida not-for-profit corporation (the "Borrower"). The proceeds of the Loan will be used by the Borrower (i) to pay the costs of the acquisition, construction and equipping of educational facilities of the Borrower described on Exhibit B to the Indenture (the "Projects") and (ii) to pay costs of issuance of the Bonds.

2. Proceeds of the Bonds. The amount realized by the Issuer from the sale of the Series A Bonds and Series C Bonds (the "Net Proceeds") is $[NET PROCEEDS], representing the par amount of $[PRINCIPAL AMOUNT], less underwriters' discount of $[UNDERWRITERS' DISCOUNT]. The Net Proceeds will be used as follows:

(a) $[PROJECT ACCOUNT DEPOSIT] will be deposited in the Project Account in the Project Fund and, together with investment earnings, used to pay costs of the Projects.

(b) $[BOND INSURANCE PREMIUM] will be used to pay a bond insurance premium.

(c) $[RESERVE SURETY PREMIUM] will be used to pay a premium for a surety bond for deposit to the Debt Service Reserve Fund.

(d) $[COST OF ISSUANCE DEPOSIT] will be deposited in the Costs of Issuance Account in the Project Fund and used to pay costs of issuing the Bonds, including initial liquidity and remarketing fees.

3. Payment of the Bonds.

(a) Payments on the Loan, interest earnings and certain other amounts are deposited as received in the Debt Service Fund. Amounts deposited in the Debt Service Fund are used to pay the principal of, redemption premium, if any, and interest on the Bonds as the same become due at maturity, upon redemption, by acceleration or otherwise. Amounts required to be paid under the Loan Agreement to restore any deficiency in the Debt Service Reserve Fund Requirement will be deposited as received in the Debt Service Reserve Fund.

(b) All amounts deposited in the Debt Service Fund will be used within 13 months of the date of deposit and any amounts received from the investment of such amounts will be used within one year from the date of receipt to pay debt service on the Bonds. The Debt Service Fund will be used primarily to achieve a proper matching of revenues and debt service on the Bonds within each Bond year. Such amounts deposited to the Debt Service Fund will be depleted at least once a year except for a reasonable carryover amount not to exceed the greater of (A) one year's earnings on such amounts for the immediately preceding bond year or (B) one-twelfth of annual debt service on the Bonds for the immediately preceding bond year.

(c) The Borrower has covenanted to maintain in the Debt Service Reserve Fund an amount equal to the Debt Service Reserve Fund Requirement which is the least of: (i) the maximum Principal and Interest Requirements on the Bonds in the current or any

future Fiscal Year; (ii) 125% of the Average Annual Debt Service Requirement for the Bonds; or (iii) 10% of the proceeds of the Bonds. The Debt Service Reserve Fund Requirement will be funded with a surety bond. The funding of the Debt Service Reserve Fund in the amount of the Debt Service Reserve Requirement is, based on a certificate of UNDERWRITER LLC attached as Exhibit A to this Certificate, reasonably required to permit marketing of the Bonds.

(d) Other than the Funds and Accounts described in (b) above, there are no funds or accounts established, or expected to be established, under the Indenture or otherwise that are reasonably expected to pay, or secure the payment of, debt service on the Bonds. Amounts deposited in the Bond Purchase Fund will be used for payment of the purchase price of tendered Bonds. Amounts deposited in the Rebate Fund will be used for payment of any required arbitrage rebate. Thus, there is no reasonable assurance that such amounts will be available to pay debt service on the Bonds if the Borrower encounters financial difficulty.

4. **Bond Yield**. The yield on the Bonds is the discount rate that, for each computation period, produces a present value equal to the purchase price or deemed purchase price of the Bonds of all unconditionally payable payments of principal, interest and fees for qualified guarantees within the meaning of Treasury Regulations §1.148-4(f) that are attributable to the computation period as determined under Treasury Regulations §1.148-4(c) (the "Bond Yield"). For purposes of this calculation, the purchase price of the Bonds for the initial computation period is the $[PRINCIPAL AMOUNT] face amount. The premiums paid for bond insurance and the reserve surety and the fees paid and to be paid for the Liquidity Facility may be taken into account in computing the Bond Yield on the basis of the certificate of UNDERWRITER LLC attached as Exhibit A to this Certificate that the present value of the bond insurance and reserve surety premiums and the liquidity fees is reasonably expected to be

less than the present value of interest expected to be saved as a result of the bond insurance, reserve surety and Liquidity Facility using the expected Bond Yield as the discount rate in computing such present values. The bond insurance and reserve surety premiums and the liquidity fees do not (i) exceed reasonable, arm's length charges for the transfer of credit risk or (ii) include any payment for any direct or indirect services other than the transfer of credit risk. The Borrower is entering into the ISDA Master Agreement, dated as of _____ __, 200_, between the Borrower and _____, including the schedule thereto and the related confirmation (the "Swap Agreement"). Attached as Exhibit B to this certificate is an identification of the Swap Agreement pursuant to Treasury Regulations §1.148-4(h)(2)(viii). The Swap Agreement does not contain any investment element. The payments under the Swap Agreement are on-market rates as of the date the Swap Agreement was entered into. Accordingly, payments under the Swap Agreement will be taken into account as a "qualified hedge" in calculating the Bond Yield.

5. Loan Yield. The yield on the Loan, determined as the periodic discount rate at which the present value of payments of principal and interest on the Loan equals the purchase price of the Loan, is not expected to exceed the yield on the Bonds by more than 1½ percent. For purposes of computing the yield on the Loan, fees paid to Issuer has been included as payments on the Loan and payments on the Loan have been disregarded to the extent the present value of those payments does not exceed the present value of costs of issuing, carrying and repaying the Bonds, using the Bond Yield as the discount rate. The Issuer reasonably expects that at least 95 percent of the payments of the Loan will be used for debt service on the Bonds or redemption of them, to pay or reimburse the Issuer for administrative costs of issuing the Bonds or costs of the program financed by the Bonds, to pay or reimburse the Issuer for anticipated

future losses directly related to the program, or to finance additional purpose investments for the same general purposes of the program. In order for the Loan to be treated as a "program investment" within the meaning of Treasury Regulations §1.148-1(b), the Issuer will not permit the person from whom the Issuer acquires the Loan, or any person related to such person, to purchase the Bonds, or other obligations which financed the same program financed by the Bonds, in an amount related to the amount of the Loan.

6. **Projects**. $[PROJECT ACCOUNT DEPOSIT] of Net Proceeds, together with investment earnings, will be used to pay costs of the Projects. The Borrower will within six months from today spend at least five percent of the "net sale proceeds" of the Bonds towards the costs of the Projects. The Projects include a substantial amount of construction expenditures. A certificate of a licensed architect that a period longer than three years is necessary to complete the Projects is attached as Exhibit C . Work on the Projects and the allocation of such net sale proceeds to expenditures will proceed with due diligence. I reasonably expect that the Borrower will spend at least (i) 10% of the spendable proceeds of the Bonds (within the meaning of section 149(g) of the Code and Treasury Regulations §1.149(g)-1(a)) within one year, (ii) 30% of the spendable proceeds within two years, (iii) 60% of the spendable proceeds within three years and (iv) 85% of the spendable proceeds within five years from today. Accordingly, all of such Net Proceeds may be invested without regard to yield restriction under the 5-year temporary period provided by Treasury Regulation §1.148-2(e)(2)(ii). In the event any of such Net Proceeds remain unspent after five years, the Issuer will require the Borrower to make any necessary yield reduction payments under Treasury Regulation §1.148-5(c).

7. **Arbitrage Rebate.** The Issuer hereby agrees to comply with the Arbitrage Rebate Agreement dated as of _____ __, 200_, among the Issuer, the Trustee and the Borrower

attached as Exhibit D. In the event that the Issuer complies with any of the arbitrage rebate exceptions in Treasury Regulation §1.148-7, then the Issuer agrees to comply with the Arbitrage Rebate Agreement only as to amounts which are not excepted from the rebate requirements by the Treasury Regulations.

This Certificate is being delivered in reliance upon the Use of Proceeds Certificate of the Borrower dated ____ __, 200_, delivered in connection with the issuance of the Bonds. To the best of my knowledge and belief, the expectations stated in this Certificate are reasonable.

IN WITNESS WHEREOF, the undersigned on behalf of the Issuer has executed this Arbitrage Certificate as of this __th day of _____, 200_.

_____
By:_____
Title_____

EXHIBIT A

I, the undersigned officer of UNDERWRITER LLC, hereby certify that:

(a) The underwriter initially offered all of the Bonds to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) at a price equal to the par amount and, based on actual facts as of the sale date, reasonably expected to sell at least ten percent of the aggregate face amount of the Bonds to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) at prices equal to the par amount.

(b) The funding of the Debt Service Reserve Fund in the amount of the Debt Service Reserve Requirement is reasonably required to permit marketing of the Bonds.

(c) The present value of the bond insurance and reserve surety premiums and fees for the Liquidity Facility paid and to be paid is less than the present value of interest reasonably expected to be saved determined by using the Bond Yield as the discount rate.

(d) The initial interest rate on the Bonds is the lowest rate that would permit the Bonds to be marketed at par.

DATED: _____ __, 200_

_____
By:_____
Title:_____

EXHIBIT B

Identification of Swap Agreement

EXHIBIT C

Architect's Certificate

EXHIBIT D

ARBITRAGE REBATE AGREEMENT

This ARBITRAGE REBATE AGREEMENT is by and among the Host City, Florida (the "Issuer"), ABC Not-for-Profit School, Inc., a Florida not-for-profit corporation (the "Borrower"), and Trustee Bank, N.A., as trustee (the "Trustee").

W I T N E S S E T H:

WHEREAS, the Issuer has determined to issue its Host City, Florida Revenue Bonds (ABC Not-for-Profit School, Inc. Project), Series 200_ (the "Bonds"); and

WHEREAS, in order to ensure that the Bonds will comply with the Code and the Regulations (as defined below), the Issuer, the Borrower, and the Trustee agree as follows:

ARTICLE I.

Definitions

Section 101. Terms not otherwise defined in Section 102 hereof shall have the meanings given to them in the Arbitrage Certificate delivered today by the Issuer in connection with the issuance of the Bonds.

Section 102. The following terms shall have the following meanings:

Bond Counsel's Opinion shall mean an opinion signed by an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by the Issuer.

Bond Year shall mean the one-year period beginning on the day after the expiration of the preceding Bond Year. The first Bond Year shall begin on the date of issue of the Bonds and shall end on the date selected by the Issuer, provided that such Bond Year shall not exceed one calendar year. The last Bond Year shall end on the date of retirement of the last Bond.

Bond Yield shall mean the discount rate that produces a present value as of the first day of any Computation Period equal to the Issue Price of all payments of principal, interest and fees for qualified guarantees within the meaning of Regulations section 1.148-4(f) attributable to the Computation Period as determined under Regulations section 1.148-4(c).

Code shall mean the Internal Revenue Code of 1986, as amended, and any successor provisions thereto.

Computation Date shall mean the last day of any Bond Year selected by the Issuer ending on or before the latest date on which the first rebate payment is required to be made under

Regulations section 1.148-3(f). After the first required payment date, the Issuer must consistently treat either the last day of each Bond Year or the last day of each fifth Bond Year as the Computation Date.

Computation Period shall mean the period between Computation Dates. The first Computation Period begins on the date of issue of the Bonds and ends on the first Computation Date. Subsequent Computation Periods begin on the date immediately following the Computation Date and end on the next Computation Date.

Gross Proceeds shall mean:

(a) any amounts actually or constructively received by the Issuer from the sale of the Bonds but excluding amounts used to pay accrued interest on the Bonds within one year of the date of issuance of the Bonds;

(b) transferred proceeds of the Bonds under Regulations section 1.148-9;

(c) any amounts actually or constructively received from investing amounts described in (a), (b) or this (c); and

(d) replacement proceeds of the Bonds within the meaning of Regulations section 1.148-1(c). Replacement proceeds include amounts reasonably expected to be used directly or indirectly to pay debt service on the Bonds, pledged amounts where there is reasonable assurance that such amounts will be available to pay principal or interest on the Bonds in the event the Issuer encounters financial difficulties and other replacement proceeds within the meaning of Regulations section 1.148-1(c)(4).

Whether an amount is Gross Proceeds is determined without regard to whether the amount is held in any fund or account established under the Indenture or the Loan Agreement.

Investment Property shall mean any security, obligation (other than a tax-exempt bond within the meaning of Code section 148(b)(3)(A)), annuity contract or investment-type property within the meaning of Regulations section 1.148-1(b).

Issue Price is $[PRINCIPAL AMOUNT] for the first Computation Period, which is the initial offering price to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters of wholesalers) at which price a substantial amount of the Bonds was sold. For subsequent Computation Periods, Issue Price shall be the deemed "issue price" as determined under Regulations section 1.148-4(c)(2)(iv).

Nonpurpose Investment shall mean any Investment Property acquired with Gross Proceeds, and which is not acquired to carry out the governmental purposes of the Bonds.

Payment shall mean any payment within the meaning of Regulations section 1.148-3(d)(1) with respect to a Nonpurpose Investment.

Rebate Requirement shall mean as of the last day of any Computation Period the excess of the future value of all Receipts over the future value of all Payments. For purposes of calculating the Rebate Requirement the Bond Yield shall be used to determine the future value of Receipts and Payments in accordance with Regulations section 1.148-3(c).

Receipt shall mean any receipt within the meaning of Regulations section 1.148-3(d)(2) with respect to a Nonpurpose Investment.

Regulations shall mean the sections 1.148-1 through 1.148-11 and section 1.150-1 of the regulations of the United States Department of the Treasury promulgated under the Code, including any amendments thereto or successor regulations.

Yield shall mean the discount rate that, when used in computing the present value as of the date the Nonpurpose Investment is first allocated to the Bonds of all unconditionally payable receipts from the Nonpurpose Investment, produces an amount equal to the present value of all unconditionally payable payments for the Nonpurpose Investment, using semi-annual compounding on the basis of a 360-day year. The purchase price of a Nonpurpose Investment is the amount of Gross Proceeds directly used to purchase the investment (including brokerage commissions and other qualified administrative costs within the meaning of Regulations section 1.148-5(e)(2)) or, if not so directly purchased, its value (as determined under Regulations section 1.148-5(d)) on the date it becomes a Nonpurpose Investment.

ARTICLE II
Rebate Payments

Section 201. Within 60 days after the end of each Bond Year, the Borrower shall cause the Rebate Requirement to be calculated and the Borrower shall pay to the Trustee for deposit in the Rebate Fund established under the Indenture the amount by which the Rebate Requirement exceeds the amount on deposit in the Rebate Fund. The Borrower shall direct the Trustee to pay to the United States of America out of amounts held in the Rebate Fund:

(a) not later than 60 days after each Computation Date, an amount which, when added to the future value of all previous rebate payments with respect to the Bonds (determined as of such Computation Date), is equal to at least 90% of the sum of the Rebate Requirement (determined as of such Computation Date) plus the future value of all previous rebate payments with respect to the Bonds (determined as of such Computation Date); and

(b) not later than 60 days after the retirement of the last Bond, an amount equal to 100% of the Rebate Requirement (determined as of the date of retirement of the last Bond).

If the Trustee does not hold sufficient amounts in the Rebate Fund to make such payments, the Borrower shall transfer to the Trustee the amount of any such deficiency. Each payment required to be made under this Section shall be filed with the Internal Revenue Service

Center, Ogden, Utah 84201, on or before the date such payment is due, and shall be accompanied by IRS Form 8038-T furnished to the Trustee by the Borrower.

ARTICLE III
Investments

Section 301. No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

Section 302. For purposes of Section 301, whether a Nonpurpose Investment has been purchased or sold or disposed of for its fair market value shall be determined as follows:

(a) The fair market value of a Nonpurpose Investment generally shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in a bona fide arm's length transaction. Fair market value shall be determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding.

(b) Except as provided in Section 303 and 304, a Nonpurpose Investment that is not of a type traded on an established securities market, within the meaning of Code section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(c) If a United States Treasury obligation is acquired directly from or sold or disposed of directly to the United States Treasury, such acquisition or sale or disposition shall be treated as establishing the fair market value of the obligation.

Section 303. The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal is considered to be its fair market value if the yield on the certificate of deposit is not less than:

(a) the yield on reasonably comparable direct obligations of the United States; and

(b) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

Section 304. A guaranteed investment contract shall be considered acquired and disposed of for an amount equal to its fair market value if:

(a) A bona fide solicitation in writing for a specified guaranteed investment contract, including all material terms, is timely forwarded to all potential providers. The solicitation must include a statement that the submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was

determined without regard to any other formal or informal agreement that the potential provider has with the Issuer or any other person (whether or not in connection with the Bonds), and that the bid is not being submitted solely as a courtesy to the Issuer or any other person for purposes of satisfying Treasury Regulation section 1.148-5(d)(6)(iii)(B)(1) or (2).

(b) All potential providers have an equal opportunity to bid, with no potential provider having the opportunity to review other bids before providing a bid.

(c) At least three reasonably competitive providers (i.e. having an established industry reputation as a competitive provider of the type of investments being purchased) are solicited for bids. At least three bids must be received from providers that have no material financial interest in the Bonds (e.g., a lead underwriter within 15 days of the issue date of the Bonds or a financial advisor with respect to the investment) and at least one of such three bids must be from a reasonably competitive provider. If the Issuer or Borrower uses an agent to conduct the bidding, the agent may not bid.

(d) The highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees) is purchased.

(e) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the reasonably expected deposit and drawdown schedule for the amounts to be invested.

(f) The terms for the guaranteed investment contract are commercially reasonable (i.e. have a legitimate business purpose other than to increase the purchase price or reduce the yield of the guaranteed investment contract).

(g) The provider of the investment contract certifies the administrative costs (as defined in Regulations section 1.148-5(e)) that it pays (or expects to pay) to third parties in connection with the guaranteed investment contract.

(h) The Issuer retains, or directs the Trustee in writing to retain, until three years after the last outstanding Bond is retired, (i) a copy of the guaranteed investment contract, (ii) a receipt or other record of the amount actually paid for the guaranteed investment contract, including any administrative costs paid by the Issuer or Borrower and a copy of the provider's certification described in (g) above, (iii) the name of the person and entity submitting each bid, the time and date of the bid, and the bid results and (iv) the bid solicitation form and, if the terms of the guaranteed investment contract deviates from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation.

ARTICLE IV
Further Assurances

Section 401. The Borrower shall take, and shall direct the Trustee to take, all necessary and desirable steps, as determined by the Borrower, to comply with the requirements hereunder

in order to ensure that interest on the Bonds is excluded from gross income for federal income tax purposes under the Code; provided, however, compliance with any such requirement shall not be required in the event the Borrower receives a Bond Counsel's Opinion that either (i) compliance with such requirement is not required to maintain the exclusion from gross income of interest on the Bonds, or (ii) compliance with some other requirement will meet the requirements of the Code. In the event the Borrower receives such a Bond Counsel's Opinion, the parties agree to amend this Agreement to conform to the requirements set forth in such opinion.

Section 402. If for any reason any requirement hereunder is not complied with, the Borrower shall take, and shall direct the Trustee to take, all necessary and desirable steps, as determined by the Borrower, to correct such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence and the Trustee shall pay from amounts in the funds and accounts held under the Indenture, or if such amounts are insufficient the Borrower shall pay, and required interest or penalty under Regulations section 1.148-3(h).

Section 403. Notwithstanding anything else herein contained to the contrary, the Trustee's obligations hereunder shall be limited to (i) following the directions of the Borrower as to the investment of funds held by the Trustee under the Indenture in specifically identified investments, (ii) making the deposits into the Rebate Fund, and (iii) making the payments to the United States of America as directed by the Borrower pursuant to Article II hereof, and otherwise shall have no responsibility or liability for compliance with Section 148 of the Code or for monitoring compliance by the Borrower of any of the provision hereunder or under section 148 of the Code.

IN WITNESS WHEREOF, the undersigned have set their hands and seals to this Arbitrage Rebate Agreement, as of the __th day of _____, 200_.

HOST CITY, FLORIDA

By:_____
Title:_____

TRUSTEE BANK, N.A., , as Trustee

By:_____
Title:_____

ABC NOT-FOR-PROFIT SCHOOL, INC.

By:_____
Title:_____

(___)

USE OF PROCEEDS CERTIFICATE

On behalf of ABC Not-for-Profit School, Inc., a Florida not-for-profit corporation (the "Borrower"), the undersigned hereby certifies the following with respect to the $[PRINCIPAL AMOUNT] Host City, Florida Revenue Bonds (ABC Not-for-Profit School, Inc. Project), Series 200_ (the "Bonds") to be issued today by the Host City, Florida (the "Issuer") under a Trust Indenture dated as of _____ __, 200_ (the "Indenture") between the Issuer and Trustee Bank, N.A., as trustee. The Bonds are being issued for the purpose of paying the costs of the acquisition, construction and equipping of educational facilities of the Borrower (the "Projects").

1. The Borrower has received and reviewed the Arbitrage Certificate of the Issuer dated ____ __, 200_, delivered in connection with the issuance of the Bonds (the "Arbitrage Certificate"). The Arbitrage Certificate contains the expectations of the Borrower with respect to the Bonds and the proceeds of such Bonds and the facts upon which the Borrower's and the Issuer's expectations are based. To the best of the Borrower's knowledge, the expectations stated in the Arbitrage Certificate are reasonable. In order for the Loan (as defined in the Arbitrage Certificate) to be treated as a "program investment" within the meaning of Treasury Regulation section 1.148-1(b), the Borrower covenants that neither the Borrower nor any person related to the Borrower will purchase Bonds in an amount related to the amount of the Loan.

2. Except as described in this paragraph 2, no portion of the proceeds of Bonds will be used to replace existing or future funds of the Borrower that were to be used to pay costs of acquiring the Projects which have been or will be used to acquire, directly or indirectly, obligations producing a yield in excess of the yield on the Bonds. The Borrower has received certain pledges of future contributions which are restricted to fund costs of the Projects. The Borrower covenants that it will use such restricted future contributions (other than the portion of

such contributions designated for the Borrower's endowment in order to fund operating costs of the Projects) to pay debt service on or to redeem Bonds within one year of the date of receipt of such contributions.

3. The Borrower is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (the "Code") and is exempt from tax under section 501(a) of the Code.

4. All of the proceeds of the sale of the Bonds and investment earnings on such proceeds, less proceeds deposited in the Debt Service Reserve Fund and used to pay costs of issuance (the "Net Proceeds"), will be used to acquire or renovate the Project or to fund related working capital costs. Therefore, all of the Net Proceeds will be expended for (i) costs which will be chargeable to the Projects' capital account or (ii) initial operating costs treated as part of the same "capital project" as the acquisition and construction of the Projects under Treasury Regulation sections 1.148-1(b) and 1.148-6(d)(3)(ii)(A).

5. The TEFRA notice for the Bonds accurately described the Projects and the Borrower. The Projects are located at the addresses listed in the notice. The Commissions of the Issuer and the City of _____, Florida approved the issuance of the Bonds after a hearing which was held at the time set forth in the notice.

6. The Projects will be owned and operated by the Borrower. The Borrower reasonably expects that it will be the only organization, entity or person which will occupy or otherwise use the Projects, other than natural persons using the Project as beneficiaries of the Borrower's exempt activities under section 501(c)(3) of the Code. The Borrower covenants not to enter into leases, contracts or other arrangements for the use or management of any portion of the Projects except (i) contracts or arrangements with governmental units or organizations

described in section 501(c)(3) of the Code or (ii) contracts or arrangements which comply with the guidelines of Revenue Procedure 97-13 (or any successor Revenue Procedure) or applicable regulations. No portion of the Projects will be used in activities which constitute unrelated trades or businesses of the Borrower determined by applying section 513(a) of the Code.

7. The weighted average maturity of the Bonds does not exceed 120 percent of the average reasonably expected economic life of the Projects, as determined under Rev. Proc. 62-21, 1962-2 C.B. 418, Rev. Proc. 87-56, 1987-2 C.B. 674, and Section 147(b) of the Code.

8. (i) The payment of principal and interest on the Bonds will not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States.

(ii) The proceeds of the Bonds will not be used to make loans the payment of principal or interest with respect to which are to be guaranteed (in whole or in part) by the United States or any agency or instrumentality thereof or invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds (a) may be so invested for an initial temporary period not exceeding 5 years until needed for the purpose for which the Bonds are being issued, (b) may be so used in making investments of a bona fide debt service fund, or (c) may be invested in obligations issued by the United States Treasury.

(iii) The Bonds will not otherwise be federally guaranteed within the meaning of Section 149(b) of the Code.

9. No more than 2 percent of the proceeds of the Bonds will be used to pay costs of issuance of the Bonds. For purposes of this restriction, costs of issuing the Bonds is defined to include (i) underwriters' discount or placement agent fees; (ii) counsel fees (including bond counsel, placement agent's counsel, Borrower's counsel, as well as any other specialized counsel fees incurred in connection with the issuance of the Bonds); (iii) financial advisor fees incurred

in connection with the issuance of the Bonds; (iv) rating agency fees; (v) trustee fees incurred in connection with the issuance of the Bonds; (vi) paying, certifying and authenticating agent fees related to issuance of the Bonds; (vii) accountant fees related to issuance of the Bonds; (viii) printing costs of the Bonds and of preliminary and final offering materials; (ix) costs incurred in connection with any required public approval process (e.g., publication costs for public notices generally and costs of any public hearing); (x) costs of engineering and feasibility studies necessary with respect to the issuance of the Bonds and (xi) similar costs that constitute "issuance costs" under section 147(g) of the Code.

10. No portion of the proceeds of the Bonds will be used to provide any of the following: airplane, skybox or other private luxury box, facility primarily used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

11. At least 95 percent of the "net proceeds" of the Bonds will be used to finance capital expenditures incurred after the effective date (August 5, 1997) of section 145(b)(5) of the Code.

IN WITNESS WHEREOF, the undersigned has signed this Proceeds Certificate on behalf of the Borrower as of this __th day of _____, 200_.

ABC NOT-FOR-PROFIT SCHOOL, INC.

By:_____
Title:_____

[NOTE: DOCUMENT FORM PREDATES EMMA]

CONTINUING DISCLOSURE AGREEMENT

This **CONTINUING DISCLOSURE AGREEMENT** (this "Disclosure Agreement") is executed and delivered _____ __, 200_ by **CONDUIT MULTIFAMILY HOUSING BORROWER, LLLP** (the "Borrower") and **TRUSTEE BANK, N.A.**, a national banking association, acting as dissemination agent (the "Dissemination Agent") and as trustee (the "Trustee") under a Trust Indenture dated as of _____ __, 200_, by and between Host County Housing Finance Authority (the "Issuer") and the Trustee (the "Indenture") in connection with the issuance of the Issuer's $[PRINCIPAL AMOUNT] Multifamily Mortgage Revenue Bonds, 200_ Series A (Conduit Multifamily Housing Borrower) (the "Bonds"). The proceeds of the Bonds are being loaned by the Issuer to the Borrower pursuant to a Loan Agreement dated as of _____ __, 200_ among the Issuer, the Trustee and the Borrower (the "Loan Agreement"). The Borrower, the Trustee and the Dissemination Agent covenant and agree as follows:

1. Purpose of the Disclosure Agreement. The Borrower is entering into this Disclosure Agreement to provide through the Dissemination Agent, financial information and operating data of the Borrower in order to assist the Participating Underwriter's (herein defined) compliance with the Rule. The Borrower, the Trustee and the Dissemination Agent acknowledge that the Issuer has undertaken no responsibility with respect to any reports, notices or disclosures provided or required hereunder, and has no liability to any person, including any Owner of the Bonds, with respect to any such reports, notices or disclosures.

2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined herein, the following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report prepared by the Borrower pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

"Borrower" means Conduit Multifamily Housing Borrower, LLLP, a Florida limited liability limited partnership and its successors and assigns.

"Business Day" means any day other than a Saturday, Sunday or a day when banks in the City of New York, New York or in the cities in which the Principal Office of the Trustee, the Paying Agent or the Dissemination Agent are located are required or authorized by law to be closed or on which the New York Stock Exchange is closed.

"Dissemination Agent" shall mean Trustee Bank, N.A., a national banking association, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated by the Issuer.

"Disclosure Representative" shall mean the manager of the general partner of the Borrower or his or her designee, or such other person as the Borrower shall designate in writing to the Trustee from time to time.

"Listed Events" shall mean any or all of the events listed in Section 5(a) of this Disclosure Agreement.

"National Repository" shall mean any current or future Nationally Recognized Municipal Securities Information Repository for purposes of the Rule. A list of the names and addresses of each National Repository and State Repository as of any date may currently be obtained by calling the SEC's Fax on Demand Service at 202/942 8088 and requesting document numbers 0206 and 0207, respectively, or by visiting the SEC's web site at "http://www.sec.gov/info/municipal/nrmsir.htm."

"Owner" and "Registered Owner" shall mean any individual beneficial owner of the Bonds. Beneficial ownership is to be determined consistent with the definition thereof contained in Rule 13d 3 of the Securities and Exchange Act of 1934, as amended, or, in the event such provisions do not adequately address the situation at hand (in the opinion of nationally recognized bond counsel), beneficial ownership is to be determined based upon ownership for federal income tax purposes.

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

"Private Placement Memorandum" shall mean the Private Placement Memorandum of the Issuer, dated _____ __, 200_, delivered in connection with the offering of the Bonds and any amendment or supplement thereto.

"Repository" shall mean each National Repository and each State Repository if any.

"Rule" shall mean 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.

"State Repository" shall mean any public or private repository or entity designated by the state in which the Issuer is located as a state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Agreement, there is no State Repository.

"Trustee" means Trustee Bank, N.A., a national banking association, with its designated trust office in _____, _____, and any successor in trust pursuant to the Indenture.

3. <u>Provision of Annual Reports</u>.

(a) Not later than the one hundred twenty (120) days after the end of the Borrower's fiscal year (currently December 31), commencing with fiscal year 200_, the Borrower shall provide to the Dissemination Agent, an Annual Report prepared by an independent certified public accounting firm selected by the Borrower, together with sufficient copies of such Annual Report for filing with each Repository. However, an annual financial statement compiled or reviewed by a licensed certified public accountant may be submitted in lieu of an audited financial statement for the Development prior to the issuance of a certificate of occupancy for any unit in the Development, provided that the subsequent annual audited financial statement

shall include all operations since inception. If the Dissemination Agent has not received the Annual Report by such date, the Dissemination Agent shall notify the Borrower in writing by facsimile transmission, confirmed by telephone.

(b) The Dissemination Agent shall, as soon as practical, but in no event later than the fourteenth (14th) Business Day following receipt of an Annual Report, provide such Annual Report to each Repository.

(c) If an Annual Report is not filed on or before the date required in any year, the Dissemination Agent shall send a notice to each Repository and the Municipal Securities Rulemaking Board in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(i) determine each year prior to the date for providing the Annual Report the name and address of each National Repository and each State Repository, if any; and

(ii) provide a written report to the Borrower and the Issuer stating that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided, and listing all the Repositories to which it was provided.

4. Content of Annual Reports. The Annual Report prepared by the Borrower shall contain or incorporate by reference the following:

(a) The certified audited financial statements of the Borrower for the prior fiscal year, including income statement, balance sheet, and cash flows of operations of the Development, prepared in accordance with accounting principals generally accepted in the United States of America as promulgated from time to time by the Government and Financial Accounting Standards Board. If the Development's audited financials are not available by the time the Annual Report is required to be filed pursuant hereto, the Annual Report shall contain unaudited financial statements in a format similar to the audited financial statements and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) The Borrower shall also include, in or with each Annual Report, the Development's current occupancy levels, current monthly rental rates and the current expenditures for monthly operation and maintenance, net operating income, taxes and property insurance.

Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues with respect to which the Borrower is an "obligated person" (as defined by the Rule), which have been filed with each Repository or the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The Borrower shall clearly identify each such other document so incorporated by reference. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package.

The Dissemination Agent shall have no duty or obligation to review the content of the Annual Report for compliance with this Agreement or the Rule, but shall file the Annual Report in the form it is received by the Dissemination Agent.

5. Reporting of Listed Events.

(a) This Section shall govern the giving of notices of the occurrence of any or all of the following Listed Events:

(i) Principal and interest payment delinquencies;

(ii) Non-payment related defaults;

(iii) Unscheduled draws on debt service reserves reflecting financial difficulty;

(iv) Unscheduled draws on credit enhancements reflecting financial difficulty;

(v) Substitution of credit or liquidity providers, or their failure to perform;

(vi) Adverse tax opinions or events affecting the status of the bonds;

(vii) Modifications to rights of Owners of the Bonds;

(viii) Calls (other than mandatory scheduled redemptions);

(ix) Defeasances;

(x) Release, substitution, or sale of property securing repayment of the Bonds;

(xi) Rating changes (including those relating to the Bonds, Bondowner Representatives, the Borrower, reserve fund surety bonds, providers of guaranteed investment contracts, and other entities directly or indirectly securing payment of the Bonds); and

(xii) Notice of any failure on the part of the Borrower or any other Obligated Person to meet the requirements of this Section.

(b) The Trustee shall, within three (3) Business Days of obtaining actual knowledge of the occurrence of any of the Listed Events, provide the Borrower and the Dissemination Agent (if not the Trustee) with notice (by facsimile transmission confirmed by telephone), and request that the Borrower promptly notify the Trustee and the Dissemination Agent (if not the Trustee) in writing whether or not to report the event pursuant to subsection (f) hereof. For purposes of providing notice to the Borrower and the Dissemination Agent (if not the Trustee), the Trustee shall, without further evidence or inquiry, assume that the unscheduled draws described in subsection (a) (iii) and (iv) hereof reflect financial difficulty.

(c) Whenever the Borrower obtains actual knowledge of the occurrence of a Listed Event, because of notice from the Trustee pursuant to subsection (b) hereof or otherwise, the

Borrower shall as soon as possible determine if such event is required by the Rule to be disclosed.

(d) If the Borrower has determined that a Listed Event is required to be disclosed, the Borrower shall promptly prepare a written notice describing the Listed Event and provide the same to the Trustee and the Dissemination Agent (if not the Trustee) and instruct the Dissemination Agent to report the occurrence pursuant to subsection (f) hereof.

(e) If the Borrower determines that a Listed Event is not required to be disclosed, the Borrower shall so notify the Trustee and the Dissemination Agent (if not the Trustee) in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (f) hereof.

(f) If the Dissemination Agent has been provided with a written notice describing a Listed Event and instructed by the Borrower to report the occurrence of such Listed Event, the Dissemination Agent shall file the notice with the Municipal Securities Rulemaking Board and the Repositories. The foregoing notwithstanding, notice of a Listed Event described in subsections (a)(viii) and (ix) hereof need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to the Owners of affected Bonds pursuant to the Indenture. The Dissemination Agent may conclusively rely on the instructions of the Borrower not to report a Listed Event.

6. Termination of Reporting Obligation.

(a) The obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds.

(b) If in the opinion of nationally recognized bond counsel satisfactory to the Participating Underwriter, the Dissemination Agent and the Borrower, the Rule shall be amended, modified or changed so that all or any part of the information currently required to be provided thereunder shall no longer be required to be provided thereunder, then such information shall no longer be required to be provided hereunder; and if and to the extent in the opinion of nationally recognized bond counsel satisfactory to the Participating Underwriter and the Borrower, the Rule, or any provisions thereof, shall be declared by a federal court of competent and final, non appealable jurisdiction to be, in whole or in part, invalid, unconstitutional, null and void, or otherwise inapplicable to the Bonds, then the information required to be provided hereunder, insofar as it was required to be provided by a provision of the Rule so declared, shall no longer be required to be provided hereunder.

(c) If a termination or cessation described in either of clause (a) or clause (b) above occurs prior to the final maturity of the Bonds, the Borrower shall instruct the Dissemination Agent to give notice of such event in the same manner as for a Listed Event under Section 5(d) hereof.

7. Dissemination Agent. The Borrower may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a

successor Dissemination Agent. The Dissemination Agent has the right to resign with thirty days notice to the Borrower of such resignation.

8. **Successors**. If the Borrower's obligations under the Loan Agreement are assumed, in full, by some other entity, such person shall be responsible for compliance with this Disclosure Agreement in the same manner as if it were the Borrower and the original Borrower shall have no further responsibility hereunder. If the Trustee's obligations under the Indenture are assumed, in full, by a successor trustee, such person shall be responsible for compliance with this Disclosure Agreement in the same manner as if it were the original Trustee and the original Trustee shall have no further responsibility hereunder.

9. **Amendment, Waiver**. Notwithstanding any other provision of this Disclosure Agreement, the Borrower, the Dissemination Agent and the Trustee may amend this Disclosure Agreement (and the Dissemination Agent and the Trustee shall agree to any amendment so requested by the Borrower) if in the opinion of counsel expert in federal securities law matters affecting governmental bonds acceptable to the Borrower, the Dissemination Agent and the Trustee, (a) the amendment is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the Borrower, or the type of business it conducts, (b) this Disclosure Agreement, as amended, would have complied with the Rule at the time the Bonds were issued, after taking into account any amendments or interpretations of the Rule, as well as any changes in circumstances, and (c) the amendment does not materially impair the interests of the Owners.

10. **Additional Information.** Nothing in this Disclosure Agreement shall be deemed to prevent the Borrower from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Borrower chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Agreement, the Borrower shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

11. **Default**. In the event of a failure of the Borrower to comply with any provision of this Disclosure Agreement, the Trustee may (and at the request of the Owners of at least 25% in aggregate principal amount of the Bonds, shall), or any Owner may, take such action as permitted hereby. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture or the Loan Agreement, and the sole remedy under this Disclosure Agreement in the event of any failure of the Borrower to comply with this Disclosure Agreement shall be an action to compel performance; provided however that the Dissemination Agent may maintain an action for damages against the Borrower for any default by the Borrower of its obligations under Section 13 hereof. Anything herein to the contrary notwithstanding, the Trustee shall not be required to bring any enforcement action unless provision has been made to the satisfaction of the Trustee for payment of all fees and expenses of the Trustee and its counsel in connection with such action.

12. Duties, Immunities and Liabilities of Dissemination Agent. At any time the institution acting as Trustee or the institution acting as Dissemination Agent are the same institution, Article XI of the Indenture is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were contained in the Indenture. The Dissemination Agent and the Trustee shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Borrower agrees to indemnify and save the Dissemination Agent and the Trustee, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including legal fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's or the Trustee's negligence or willful misconduct. The obligations of the Borrower under this Section shall survive resignation or removal of the Dissemination Agent or the Trustee and payment of the Bonds.

The Dissemination Agent shall have no obligation to make disclosure about the Bonds, the Borrower, or any other matter except as expressly provided herein. The fact that the Dissemination Agent or any affiliate of the Dissemination Agent may have any fiduciary or banking relationship with the Issuer, the Borrower, any manager of the Development or any person with whom the Issuer or the Borrower contracts in connection with the Development, apart from the relationship created by the Indenture or this Disclosure Agreement, shall not be construed to mean that the Dissemination Agent has actual knowledge of any event or condition except as may be provided by written notice to the Dissemination Agent pursuant to this Disclosure Agreement.

13. Compensation. The Borrower covenants and agrees to pay the Dissemination Agent from time to time, and the Dissemination Agent shall be entitled to, reasonable compensation, and the Borrower will pay or reimburse the Dissemination Agent upon its request for all reasonable expenses, disbursements and advances incurred or made by the Dissemination Agent in connection with the acceptance of obligations under this Agreement (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from the Dissemination Agent's negligence or willful misconduct.

14. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Borrower, the Trustee, the Participating Underwriter, and Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

15. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

16. Notice. Any notice or other communication required or permitted by this Disclosure Agreement must be in writing unless expressly provided otherwise herein, and to the following addresses or telecopy numbers (with telephone confirmation using the phone number given), or such other addresses or telecopy/phone numbers designated in a notice to the other party hereto:

If to the Trustee or Dissemination Agent:

Trustee Bank, N.A.
Attention: Corporate Trust Department
_____
_____
_____

If to the Borrower :

Conduit Multifamily Housing Borrower, LLLP
c/o Conduit Multifamily Housing Borrower GP, LLC
Attention: _____
_____
_____
_____

IN WITNESS WHEREOF, the Trustee, Dissemination Agent and the Borrower have executed this Disclosure Agreement on the date specified above.

BORROWER:

CONDUIT MULTIFAMILY HOUSING BORROWER, LLLP, a Florida limited liability limited partnership

By: **Conduit Multifamily Housing Borrower GP, LLC**, a Florida limited liability company, its Managing General Partner

By:_____
_____, President

By: **Conduit Multifamily Housing Borrower, Inc.** a Florida corporation, its General Partner

By:_____
_____, President

IN WITNESS WHEREOF, the Trustee, Dissemination Agent and the Borrower have executed this Disclosure Agreement on the date specified above.

TRUSTEE AND DISSEMINATION AGENT:

TRUSTEE BANK, N.A.

By:_____
_____, Vice President

EXHIBIT A

NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer:	Host County Housing Finance Authority
Name of Bond Issue:	$[PRINCIPAL AMOUNT] Host County Housing Finance Authority Multifamily Mortgage Revenue Bonds, 200_ Series A (Conduit Multifamily Housing Borrower)
Name of Borrower:	Conduit Multifamily Housing Borrower, LLLP
Date of Issuance:	_____ __, 200_
CUSIP:	_____ ___

NOTICE IS HEREBY GIVEN that the above-named Borrower has not provided an Annual Report with respect to the above-named Bonds as required by Section 3 of the Continuing Disclosure Agreement, dated as of _____ __, 200_ between Trustee Bank, N.A., a national banking association, as Trustee and Dissemination Agent and the Borrower. The Borrower anticipates that the Annual Report will be filed by _____.

Dated:_____

TRUSTEE BANK, N.A., as Trustee and Dissemination Agent

By:_____
Name:_____
Title:_____

xc: Conduit Multifamily Housing Borrower, LLLP
Trustee Bank, N.A.
Host County Housing Finance Authority

National Federation of Municipal Analysts

Recommended Best Practices in Disclosure for General Obligation and Tax-Supported Debt

The National Federation of Municipal Analysts (NFMA) is an organization of nearly 1,000 members, primarily research analysts, who evaluate credit and other risks of municipal securities. These individuals represent, among others, mutual funds, insurance companies, broker/dealers, bond insurers, and rating agencies.

One of the main initiatives of the NFMA is to promote timely and complete disclosure of the financial and operating information needed to assess the credit quality and risk of a municipal debt issue. The NFMA's efforts have ranged from global disclosure-related issues to more detailed, sector-specific work such as these Recommended Best Practices in Disclosure. For further information on the NFMA's continuing work in the area of disclosure, please see the "disclosure guidelines" and "position statements" pages of the organization's web site at www.nfma.org.

In order to develop our Recommended Best Practices in Disclosure, diverse groups of NFMA analysts worked with non-analyst professionals in each sector to develop "best practices" guidelines for certain market sectors. These Recommended Best Practices are descriptions of the sector-specific financial and operating information needed to help analysts do their jobs. The NFMA believes that the best practice in disclosure will always be the one that provides a steady flow of timely information from borrowers to the market. Initial drafts of our Recommended Best Practices in Disclosure were widely circulated, and an industry comment period was used to seek input from interested parties. Subsequent to the comment period, the papers were revised. For certain sectors, Comment and Response papers were drafted; these papers are available on the NFMA web site, providing additional information on the comments received.

Following is the most recent version of the Recommended Best Practices in Disclosure for this sector. This document is not intended to supplant the amendments to SEC Rule 15c2-12, but to be used in conjunction with the guidance provided in those amendments. It is important to note that the NFMA's disclosure efforts are a continuing process. These guidelines are not static documents, and will be revisited and changed as market conditions warrant. We encourage interested parties to submit comments at any time to lgoodnfma@adelphia.net, so that they can be considered in the development of future versions of these Recommended Best Practices in Disclosure.

The NFMA Recommended Best Practices in Disclosure are not intended to be "one size fits all" recommendations, and all the information requested may not apply to every transaction in the sector. We encourage the providers of information to indicate when a specific item requested in the Recommended Best Practices is not applicable to a specific transaction.

December 2001

Introduction

The following Recommended Best Practices in Disclosure for General Obligation and Tax-Supported Debt apply to a broad range of issuers and debt issues of varying sizes and complexity. These guidelines are applicable to debt that may be primarily repaid from general property taxes and other general fund revenues, including appropriation-backed debt and similar instruments. However, these recommendations are not intended to be applied to land-secured or tax increment financings for which other guidelines exist. Further, specific narrowly defined tax revenue pledge obligations, such as sales tax revenue bonds, are also outside the scope of this document.

While the NFMA recognizes that not all requested information will be available to all issuers and some recommended items are specific to state statutes, these guidelines are meant to capture the key information that analysts deem necessary to gain a fuller understanding of the credit quality of the debt issues covered. Issuers may find that some of the recommendations are similar to that required under the recently adopted GASB 34: Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments. Except when noted, where similarities exist, the issuer need only provide reference to the applicable disclosure in its audit or other documentation. In some instances, display of historic data is recommended for five years in contrast to the GAAP reporting requirements of 10 years. This recommendation reflects the size constraints of the physical document, and is not an endorsement to reduce historic information reported in primary documents. As with all disclosure, information that is irrelevant can be distracting, and often works against the purposes of disclosure as it relates to the credit quality of a security.

Timing and Distribution of Disclosure

Our Recommended Best Practice is as follows:

1. Audited Financial Statements and other secondary market disclosure items should be available to interested parties within six months of the issuer's fiscal year end.
2. Any material event notices, including those required under SEC Rule 15c2-12, should be released as soon as practicable after the information becomes available.

To ensure timely publication of disclosure items, the issuer is strongly advised to use whatever electronic media are available, such as its own web site or similar Internet sites, in addition to dissemination to the Nationally Recognized Municipal Securities Information Repositories. In addition, we recommend that issuers and/or their representatives respond verbally and/or in writing to bondholders, underwriters, potential investors, or other market participants about credit matters. To the extent that information at the time conveyed was non-public material information, efforts should be undertaken to make that information immediately available to the entire market, at a minimum by transmission to all NRMSIRs.

How to Use this Paper

There are seven major sections of this paper, each containing the specific items viewed as necessary to meeting the NFMA's Recommended Best Practices. Those sections are:

I. General Disclosure Items
II. Demographics/Economy
III. Financial Statements
IV. General Revenue Base
V. Expenditures
VI. Debt and Financial Obligations
VII. Cash Flow Financings

To the left of each item under the major headings there is an "X" in the box indicating whether the item is to be disclosed in the official statement used in the primary offering or in secondary market disclosure (that which occurs after the initial issuance of the subject securities). There are many items that should be in both the official statement and secondary market information, but as mentioned above, all the information should be made available on a timely and easily accessible basis.

Official Statement	Secondary Market	
		I. General Disclosure Items
X		• Index/Table of Contents
X		• Introduction: This should be an overview of the offering expressed in plain English. One important feature would be a cross reference to Risk Factors if such are included anywhere in the document.
X		• Description of the Security and Nature of the Obligation: A detailed recital of the security provisions for the subject transaction, such as whether the obligation is unlimited or limited tax-backed; if the issuer is pledging its full faith and credit to debt repayment; and the nature of and limitations on any appropriations that will secure the obligation. If the security carries a state guarantee/enhancement or bond insurance, a full description of the nature and terms of the guarantee, enhancement, or bond insurance, should be included.

Official Statement	Secondary Market	
X	*	• Indicate whether the state legislature where the issuer is located has adopted the proposed revision to Article 9 of the Uniform Commercial Code that eliminates the exclusion of governmental liens on revenues and other governmental assets. If the revision has been adopted, state whether curative language reinstating the exclusion has also been enacted. If the revision has not been adopted, state whether the revision (with or without curative language) has been introduced for enactment in the state legislature. If the revision has been adopted without curative language, describe which party is responsible for filing the financing and continuation statements required to perfect the liens.
X		• Authorization and Purpose of the Issue: In addition to giving detailed information about the statutory authority for issuing the debt, important features to include in this section are: 1) voter authorization—where the authorization is from voter approval, give the total number of eligible voters or percentage voter turnout and number of votes received both for and against the measure; 2) use of proceeds—either a summary of the principal purposes for which the proceeds are to be used, trying to be as explicit as possible about the projects to be financed (e.g., street improvements, rehabilitation of city hall, purchase of equipment); alternatively, where there are a multiplicity of projects (as where a state is funding portions of multiple authorizations each approved for multiple projects), a description of the general categories of property to be financed (and an offer to furnish to interested persons more detail about the projects proposed to be financed in the form of the issuer's capital plan or other document in the issuer's possession containing such information); 3) to the extent that 10% or more of the proceeds of the obligations are being used for a project (or projects) being acquired or constructed as a public/private partnership or which is to be managed by a private entity, a general description of the arrangement with the private entity, the cost of the subject portion of the overall project and any potential material liability of the issuer relating to the project or the arrangement with the private entity. See also "Legal Matters and Tax Matters" below.

**As to asterisked items, secondary market disclosure is recommended when there have been material changes from the information originally disclosed.*

Official Statement	Secondary Market	
X		• Book-Entry-Only System description: While this information is obtained from The Depository Trust Company, it should be routinely checked so that any changes are properly included.
X		• Certification (if applicable): A representation regarding whether the obligations have full force and effect of the applicable laws; whether there is any pending litigation regarding issuance of this and any debt, as well as repayment of any obligation; and a description of any substantive, material items not included in the offering document that will be signed and delivered at the closing.
	X	• Material Events Notices: Issuers are encouraged to provide timely and complete ongoing information of material events and other substantive developments that will facilitate an efficient market for their debt and enhance market acceptance of future debt issuances.
X		• Continuing Disclosure: The Official Statement should include the continuing disclosure undertaking or indicate the exemption from SEC Rule 15c2-12. In addition, a statement regarding compliance with prior undertakings, along with an explanation of any noncompliance and the procedures that have been put in place to ensure future compliance with the disclosure undertakings should be included.
X	*	• Discussion of any special provisions that may affect remedies or recovery upon default. This would include any information about the types of remedies available to bondholders, such as a limitation to mandamus actions or no right to accelerate payment of the debt.
X	X	• Notice of any pending referendums or measures that may affect the financial future or organizational structure of the subject entity. Issuers should provide the name and reference or other identifying number(s) or character(s), and if possible, a brief description of any pending measures or referendums.

**As to asterisked items, secondary market disclosure is recommended when there have been material changes from the information originally disclosed.*

Official Statement	Secondary Market	
X		• Legal Matters and Tax Matters: A statement regarding whether or nor the offering is legal, valid and binding on the issuer, as well as what, if any, tax related issues are addressed (i.e. federally tax exempt, subject to the alternative minimum tax, state income tax exempt, and/or bank qualified). The information in this section should be as complete as possible so that a user may gain a full appreciation for the tax issues involved with owning this security. Further, the name, city and state of any lawyers or law firms that are giving the opinions described should be included. In addition, if the obligations are being offered on the basis that interest on the obligations will be exempt from gross income for federal income tax purposes, the section should include a statement to the effect that the projects to be financed or refinanced with the proceeds of the obligations have been reviewed with a nationally-recognized bond counsel and, based upon such review, it is not expected that either the proceeds of the obligations or the projects financed or refinanced with the proceeds of the obligations will be used in a manner that will adversely impact the treatment of interest on the obligations for federal income tax purposes.
	X	• Notice of any legal opinions regarding the validity or tax-exempt status of the transaction rendered subsequent to the initial sale of the securities should be made available as soon as practicable.
X	X	• Litigation and Resolution: Fully describe any known or pending litigation that may have a materially adverse financial impact on the issuer or its operations.
X		• Risk Factors/Special Considerations: While this will not typically apply to general obligation issues, it will be important for appropriation debt (i.e. leases in California) as well as for other special types of debt to which this paper applies (i.e. limited tax debt, etc). This section of the disclosure document should provide a plain English explanation of the specific risks inherent in the unique features of the debt. Done well, this section would be invaluable to retail investors who may have a more limited knowledge of the risks inherent in the transaction.

Official Statement	Secondary Market	
X		• Professionals Involved in the Financing: Provide the name of the firm and the individuals along with the city and state of their office for each professional who assisted in the preparation and sale of the securities. This would include parties such as a financial advisor, underwriter, remarketing agent, credit enhancer, bond counsel, underwriter's counsel, etc. If there are any known or suspected conflicts of interest among the professionals and/or the issuer such should be clearly described.
	X	• Provide the name of each firm and the individuals who are successors to the original professionals participating in the financing (e.g., trustee, remarketing agent, dissemination agent, credit enhancer).

II. Demographics/Economy

Much of the following information may already be in the statistical section of the issuers Comprehensive Annual Financial Report (CAFR). Where that is the case, the entity should include that information in its entirety and not by reference. It is recognized that, depending on the size, nature and location of the issuing entity, not all of the following statistical information will be available. However, issuers are encouraged to disclose as much of the recommended information as is reasonably available and may include substantially similar information prepared by an authoritative source (e.g. statistics regularly complied and released by a university).

Additionally, where available, statistics should always be provided for the specific issuing entity (e.g. the city). The issuer may choose to provide comparative data for related entities (e.g. the county, the metropolitan statistical area (MSA).

X		• A concise general history of the issuer.
X		• Description of the governmental structure/organization. This should include the form of government; powers and sources of authority; geographical boundaries; shared governmental authority, list of primary services that the entity provides; and list of principal officers and administrators.

Official Statement	Secondary Market	
		• A discussion of management and administrative policies and procedures relating to financial oversight of the entity, including:
X		1. Budgetary process as it may affect the repayment of debt, voter approval requirements, financial controls and monitoring provisions;
X	*	2. Identification of key leadership and administrative personnel with term or replacement provisions, as well as the name, title, telephone number, e-mail and mail address of a contact person who will be available to answer questions related to the disclosure document.
	X	3. Identification of the Investor Relations personnel including name and telephone number.
		• General description of the economic base. This should include land use (percentage commercial, residential, etc.), major industries, transportation, and land use limitations or similar information regarding the underlying tax base.
		• The following most recent data from the US Census Bureau:
X	*	1. The population data from the last four decennial US Censuses plus current US Census Bureau population estimates.
X	*	2. Breakdown of percentage of population by age group (0-18; 19-65; over 65). This will be of particular importance if the issuer has income tax as a revenue source.
X	*	3. Average annual income.
X	*	4. Breakdown of wealth by income bracket.
X	*	5. Percentage of population at or below poverty level.
X	*	6. Breakdown of population by level of education.

**As to asterisked items, secondary market disclosure is recommended when there have been material changes from the information originally disclosed.*

Official Statement	Secondary Market	
		• For years between decennial censuses, the following information from authoritative sources:
X	X	1. Any relevant non-US Census population data for non-decennial years.
X	X	2. Per capita income from the Bureau of Economic Analysis (BEA) or other authoritative sources.
X	X	3. Effective Buying Income.
X	X	• Ten-year history of construction statistics, if available, showing number and value of permits, preferably by type (residential, commercial, etc.).
X	X	• Ten year history of retail sales (dollar volume) within the subject area.
X	X	• Top 10 private and top 10 public sector employers with number of employees and nature of business.
		•
X	X	• Where there are public employees of the subject entity, a discussion of union membership, contract termination dates, status of expired contracts (negotiation, arbitration, etc.) and history of work stoppages, if any.
X	X	• Ten years of annual unemployment statistics and the most current year on a month-by-month basis; unemployment rates should be for the subject entity as well as, if appropriate, the county or metropolitan statistical area, and state.
X	X	• Breakdown of sector employment by general categories for public and private industry.
X	X	• Discussion of any proposed annexations.

Official Statement	Secondary Market	

III. Financial Statements

X	X	• Audited Financial statements: Each offering statement should include the annual audited financial statements, with the related notes and appropriate auditors opinion, and Required Supplementary Information, for the most recent audit period. Once the debt is in the marketplace, annual audits should be provided to investors within six months of the fiscal year end.
X	X	• Management Discussion and Analysis of Financial Results: This section should include discussion of any events or situations that may have a bearing on the issuer's ability to fulfill its responsibilities regarding timely repayment of the obligation. If the issuer follows GASB 34, the issuer may provide a cross-reference to the MD&A if this topic is addressed therein.
		• The following additional financial information should be provided if not included in the annual audit:
X	X	1. Description of the activities accounted for in specific columns in the basic financial statements;
X	X	2. The period of availability used for recognition of revenues in the governmental fund financial statements;
X	X	3. The detail of significant individual receivables and payables where balances reported on statements of net assets and balance sheets are aggregations of individual accounts;
X	X	4. If the disclosure document is being prepared in the period starting in Q4 of a the fiscal year and any time prior to publication of that year's audited financial statements, the issuer should include a budget based estimate of that fiscal year's results as well as the adopted budget for the next fiscal year. If an estimate of year-end results is not available that should be stated.
X	X	5. The current year's summary budget and the subsequent year's budget, if adopted.

Official Statement	Secondary Market	
X	X	6. Prospectively, as GASB 34 is implemented and the entity accumulates entity-wide information, it should present historical entity-wide financial information in a separate table in addition to presenting tabular form historical general fund financial information. This should be cross-referenced to the reconciliation in the audit that explains any substantive differences between categorizations in the statement of activities and the fund financial statements.
		• As to the implementation of GASB 34, the following financial information should be included in the offering statement:
X	X	1. The date or dates at which GASB 34 will be implemented as to both general implementation and retroactive reporting of existing general infrastructure (i.e., where the entity fits in the phase-in schedule). If the entity will comply earlier this should be noted.
X	X	2. If all or selected parts of GASB 34 will not be implemented, an explanation concerning non-compliance.
X	X	3. A discussion of which capital assets are being depreciated and how they will be valued if other than on the basis of historic records. Of particular concern would be the valuation of general infrastructure networks and subsystems. If certain capital assets are being depreciated based on historic records and others on some other basis, this should also be noted. If the "modified approach" is adopted, this should be noted.

IV. General Revenue Base

While these guidelines are focused on what is commonly referred to as general obligation debt, the title of this section reflects the fact that this sector of the market now covers a number of different types of securities. For debt that is secured exclusively by a limited or unlimited pledge of property taxes, the relevant revenue base for disclosure will be the more traditionally defined notion of "tax base". But the disclosure for debt, such as lease and other appropriation-based obligations, or secured by other revenues, should reflect the resources that generate general fund revenue available to pay debt service. Even with a traditional property tax-secured general obligation bond, disclosure beyond the property tax base may be appropriate if the obligation is ultimately secured by the full faith and credit of the issuer. As mentioned in the Introduction, specific narrowly defined tax revenue pledge obligations, such as sales tax revenue bonds, are outside of the scope of this document.

Official Statement	Secondary Market	
		A. Major Revenue Sources
		After the appropriate revenue sources have been determined, the following should be disclosed:
X	X	• Any category of revenue that represents more than 15% of the source of fund revenues, or the top 5 revenue sources, which ever is larger in terms of dollar contribution. To the extent a category of revenues encompasses several sources of revenue, they should be disclosed separately. The most important example here is the category of "taxes", which are often consolidated as a single line item in the financial statements. To the extent that the entity collects a variety of taxes (such as property tax, sales tax, business taxes, utility taxes); the obligation is secured by or repaid from all these tax revenues; and any of these exceeds 15% of the relevant revenues or the top 5 sources of revenues, which ever is larger in terms of dollar contribution, then separate disclosure relating to each of the tax items would be appropriate.
X		• Legal basis for revenue. This discussion should reference the relevant state constitutional or statutory provisions, significant court interpretations, and local law. There should be special attention given to any legal or practical distinction made as to the allocation of the tax, such as in cases where there is a limited levy for operating purposes and an unlimited levy for debt service, etc. The entity should disclose any legal limitations on the amount of a specific revenue that may be raised or any limitation on the rate at which or period over which a tax or assessment may be levied. Additionally, any capacity remaining under the limitation should be identified.
X		• Method of assessing the revenue. This would include such items as tax rates, tax base, assessment or other relevant valuation practices, and equalization or other adjustments to the method of levy. For specific disclosure recommendations see Property Tax and Sales Tax sections below. Audit programs and remedies for under collection should be discussed.
X	X	• Five years of historical data for all relevant revenue sources. This can be accomplished by providing on one page a chart of all the revenues and expenses for each of the last five years.

Official Statement	Secondary Market	
X	X	• Major changes. To the extent that there is a change of ±10% in annual revenues in any one major revenue source, a discussion of the leading factors behind such changes.
X	X	• The top payers for major revenue sources. To the extent that this information is not available due to laws protecting taxpayer confidentiality, a statement to that effect should be made to indicate that this is the case.

B. Property Tax

X	X	• To make the presentation as clear as possible, we encourage the use of charts, examples of which are set forth as Charts 1 and 2 in the Appendix.
X	X	• The general nature of the property tax: specifically any legislative or statutory limitations, provisions for roll-backs, if there is a need for public hearings prior to overriding any express limitations, and a description of assessments, tax rate setting, levy, collection practices and collection accounting. Also, information about any delinquency make-up provision by or for another governmental entity, such as Teeter Plans in California.
X	X	• Define terms, such as whether the amount shown is current or total taxes, whether or not current collections are net of tax appeals, if delinquent tax data includes penalties and interest, or how and when property is sold to cover delinquencies.
X	X	• Provide a five year property tax history, including tax rates, collections, and delinquencies.
X	X	• If there is any legal or practical distinction made in the way the tax is allocated, show the breakdown of such for each year.
X	X	• The general nature of the property tax base, such as a breakdown of property valuation by major classification. Information on the classification methodology should also be provided; for example, what is included within the category of unsecured or personal property, utilities, etc.
X	X	• An explanation of any property tax appeals process and a discussion of substantive pending valuation appeals.

Official Statement	Secondary Market	
X	X	• Where a revaluation has recently been completed, a discussion of appeals (both percentage of property appeals by category and dollar value by category (i.e. residential, commercial, industrial)) should be provided.
X	X	• Where the entity has financed tax refunds, a schedule of the amounts of such financings.
X	X	• To the extent that a greater than average share of the property valuation is in other than secured or real property, then additional discussion of this property may be appropriate. For example, if personal or unsecured property valuation is greater than 10% of total assessed valuation, additional disclosure regarding this portion of the property tax base may be warranted.

C. Sales Tax

X	X	• The legal basis for the collection of sales tax, and the types of sales transactions that are deemed taxable as well as significant exemptions.
X	X	• A table of the current and last 4 years of total receipts and sales tax rate with a separation of the rates by any legal or practical distinction made as to their allocation.
X	X	• Major sales tax payers. In many states, sales tax payments are not a matter of public record. The issuer is responsible for balancing such restrictions with the needs of investors to understand the risks associated with a security. Among the ways that an issuer could reconcile such conflicts would be to disclose a breakdown by industry/commodity or other categories of sales; make a statement regarding what percentage of total sales tax revenues are generated by the largest taxpayer or taxpayers without actually naming the entity; and/or present other information that provides the concentration of sales tax payers.

D. Other Revenues and Financing Sources

To the extent the issuer has any of the following items among its total general fund revenues and the specific information is readily available the disclosure report should include a discussion of the following:

Official Statement	Secondary Market	
X	X	• Income Taxes: If income taxes are a source of revenue, there should be a discussion of the components (e.g. earned income, capital gains.) As with other revenues, if the information is available, the issuer should provide a five-year history of the components as well as any rate changes.
		• Interfund Transfers: If, interfund transfers are a significant source of revenues to a general fund and the financial statements consolidate all transfers into a single item, the disclosure document should provide additional information on significant transfers, if relevant, such as:
X	X	1. An analysis of interfund payables and receivables by individual major fund, non-major funds in the aggregate, internal service funds in the aggregate and fiduciary fund type;
X	X	2. Description of the purpose for interfund balances that are not expected to be repaid within one year from the date of the financial statements;
X	X	3. Identification of the amounts transferred from other fund by individual major fund, non-major funds in the aggregate, internal service funds in the aggregate and fiduciary fund type;
X	X	4. Description of the principal purposes of the interfund transfers;
X	X	5. Description of the amount of significant transfers that are not expected to occur on a routine basis;
X	X	6. Description of the intent and amount of interfund transfers when the purpose of the transfer was inconsistent with the activity of the fund making the transfer.
		E. Investments
X	*	• A discussion of the issuer's methods for handling the investment of both its short term operating cash and its longer-term holdings.
X	*	• If there is an investment oversight committee, the names and titles of the committee members as well as an overview of the methods employed to review the issuer's investments.

**As to asterisked items, secondary market disclosure is recommended when there have been material changes from the information originally disclosed.*

Official Statement	Secondary Market	
X	*	• If the issuer invests in or employs outside money managers, the identity of the manager(s) and nature of the investments. Thereafter, if there is a change in the methods, terms or parties involved in the investment decision-making process, such should be disclosed.
X	*	• The permitted investment policy including whether or not the entity is authorized to hold derivatives.
X	*	• The method and frequency of valuing investment holdings.
X	X	• Where material relative to the size of the entity's operating revenues, specifically identify and quantify any class of investments held during the fiscal year but not at year end (e.g. derivatives).

V. Expenditures and Other Uses

For each expense category or substantial program best practice disclosure would call for the following:

X	X	• For each item of expenditure as seen on the statement of revenues and expenditures, a short explanation of the composition of the item as well as information about any trends. For instance, for state issuers, items such as Medicaid, K-12 education, public assistance; or for local issuers items such as General Government, Public Safety—Fire, Public Safety—Police, Public Works, etc. The trend information should only be that which is known and publicly available, such as newly adopted changes in salaries for a class of employee or a change in the amount of pension contributions made by the issuer.
X	X	• Debt service interest and principal expenditures.
X	X	• The legal or statutory basis for any expenditure that is specifically driven by changes in revenue. For example, a mandatory program that generally relies on federal or state funding should be disclosed. Expenditures related to dedicated revenue programs should also be discussed.

**As to asterisked items, secondary market disclosure is recommended when there have been material changes from the information originally disclosed.*

Official Statement	Secondary Market	
X	X	• Identification of any of the expense categories that are funded from other than general revenues, the specific funding sources. Also, if appropriate, there should be a cross-reference to the Statement of Activities in the audit. Prospectively, as GASB 34 is implemented and the entity accumulates historical data, it should provide historical funding information so that trends in expenses can be seen as changes occur in revenues. For instance, if 50% of the cost associated with adding police officers to Public Safety expenses in a given year is expected to be a covered from a multi-year grant from the federal government, the amount and length of the funding should be disclosed. Also, any public information regarding future funding of the expense should be presented.
X	X	• Any information regarding the possible automatic changes to any expenditure category in the event of a revenue shortfall.
X	X	• Complete description of pension plans. Where the pension plan's financial statements are included in the entity's audit, it is acceptable to cross reference to the audit. Where the audit for the pension plan is a separate document and not included in the disclosure document, consistent with GASB Statement 25, the pension plan's Required Supplementary Information should be included the body of the disclosure document.
X	X	• A discussion of post retirement benefits, other than pensions. Further, there should be a description of how each is, or expected to be funded and the dollar cost of providing those benefits for the last five years.

VI. Debt and Financial Obligations

Presentation of debt information should include all types of debt, such as general obligation, special assessment, sales tax revenue, etc., as well as any other financial obligations which are intended to be repaid over time, such as leases (including any capital leases that are subject to annual appropriation), moral obligations (where the entity promises, subject to appropriation, to replenish the debt service reserve fund), or other major contingent liabilities to secure other debt (i.e., state guarantees of local school district debt, local government deficiency make-up agreements for authorities etc.). It is important to include any obligations that may have been issued by another entity if the repayment obligation is or could be that of the entity responsible for the disclosure document. The intention is to present information that will give the reader a full appreciation of the scope and magnitude of the set and contingent financial obligations owed by the issuer and to allow for full evaluation of the debt burden facing the issuer's residents and taxpayers. Examples of presentation formats that attempt to capture the relevant data as set forth in the charts in the Appendix.

Official Statement	Secondary Market	
X	X	• Amount of authorized debt (as defined by state or local statutes) and amount outstanding as of the date of the disclosure.
X	X	• Itemize all outstanding long-term debt and other capital financial obligations that are secured by General Fund revenues. See Chart 3 in the Appendix. If this information is in the CAFR or Audited Financial Statements an issuer may provide a cross-reference rather than fill out a separate chart.
X	X	• With respect to all short-term obligations, information going back at least five years from the date the disclosure document should be provided. See Chart 4 in the Appendix.
X	X	• Separately, identify other forms of debt outstanding that are not necessarily backed by the General Fund. Where the debt carries a secondary pledge of payment from the general fund (a "double barreled" bond), this should clearly identified. These additional obligations can be disclosed in a chart form. See Chart 5 in the Appendix.
X	X	• Information about any "loans" to related governmental agencies, (i.e., a general fund "loan" to its redevelopment agency).
X	X	• Statement of legal debt limitation.
X	X	• Overlapping and, if appropriate, underlying debt identified by entity.
X	X	• For variable rate obligations identification of the liquidity support, if any, including the liquidity provider, the expiration date of the liquidity facility, and the events of immediate termination and suspension. Also, describe any put features, such as daily or weekly puts and the terms by which interest rates change.
X	X	• Total Debt Service Schedule. See Chart 6 in the Appendix.
X	X	• Information regarding existing and executory swaps, including, in respect to each identified bond issue, the counter-party, the liquidity provider, the swap terms (synthetic floating rate or synthetic fixed rate), the swap execution date/start date/ termination date, the floating rate index and percent, and termination and default events.
X	X	• A discussion of the entity's capital plan. See Chart 7 in the Appendix.

Official Statement	Secondary Market	
X	X	• Any existing bond covenant actual and/or technical defaults.

VII. Cash Flow Financing

The following are specific *additional* recommended best practice in disclosure for issuers that borrow funds on a short-term basis, generally with repayment within two years of issuance. These recommendations apply to short-term financings other than Bond Anticipation Notes.

X		• For the last two fiscal years, comparison of each year's operating budget to actual results, accompanied by a discussion of the assumptions used in preparing the original budgets.
X		• A cash flow statement for the current fiscal year with the comparable period for the prior year, including a discussion of the need for the financing and any additional information which explains the current cash position. Where the cash flow borrowing matures after the close of the current fiscal year, to the extent that the term of the pledged revenue_extends beyond the fiscal year, these cash flow statements should be prepared for the entire period that the notes are outstanding. It is important that the cash flow is presented on a month-to-month basis with greater specificity within a particular month or months if the date of the maximum deficit is not the last day of the month. Clearly identify which_Funds are included in the cash flow document. Within this disclosure particular attention should be given to providing:
X	X	• Quarterly Cash Flow Statements: For cash flow financings only, where there are quarterly statements prepared for public distribution, they should be made available to investors and other interested parties within 60 days of the end of each fiscal quarter. If projections were previously provided, this disclosure should include a discussion of any material variances from the projections.
X		1. Sufficient detail to identify major sources and uses of receipts which would be available to pay debt service or to pay working capital expenditures in lieu of financing proceeds, including any anticipated additional cash flow financings and investment earnings.
X		2. A comprehensive discussion of the assumptions used in the development of the projections, including but not limited to, expected timing of receipts and expenditures, restricted versus unrestricted funds, contractual obligations and status of union contracts, etc., and

Official Statement	Secondary Market	
X	X	3. Provisions for repayment of the financing(s) which describes any escrow requirements or other set asides, if any.
X		• A comparison of forecasted to actual cash flows for the prior two fiscal years including a discussion of material variances. A discussion of the relationship between the cash flow statement and the annual audited statements should be included.
X	X	• A full description of how the cash flow receipts, balances and any set-asides will be invested.
X	X	• Discussion of any policies that may exist regarding the maintenance of working capital reserves as well as a chart for the working capital balances for the prior 5 fiscal years.
X	X	• Discussion of any anticipated program changes that could impact program funding (i.e. welfare to work, Medicaid and/or changes in intergovernmental funding), if any.
X		• If the cash flow statements show an ending cash deficit during the period in which the cash flow borrowing is to be repaid, there should be a full discussion of what will cause the deficit and how the issuer will cover it.
X		• To the extent the issuer has the legal ability to borrow internal or external resources to cover any cash flow deficit, there should be a full description of the legal framework for such borrowing as well as five years of data indicating the amount of such borrowable funds (i.e. a chart that shows the fund balances of other legally available funds for each of the last five years).

Appendix

These charts are meant to be used as a reference, however each reporting entity should customize each chart to accurately reflect how it accounts for certain data, such as assessed valuation.

Chart 1
Property Tax Base Values

YEAR	TYPE OF PROPERTY				VALUATION		
	Residential	Industrial	Commercial	Personal	Assessed	Full	Equalized

Note: It is important to include an explanation of the how the various forms of valuation are calculated as well as how often it is done.

Chart 2
Top 10 Property Tax Payers

	Property Taxpayer	Industry	Assessed Valuation	% Total AV
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

Chart 3
Long Term Debt and Financial Obligations

Type of Obligation	Date Issued	Final Maturity	Interest Rate	Amount Issued	Amount Outstanding
GO Bonds - Limited Tax	2/1/1998	2/1/2018	3.85% - 5.15%	$20MM	$19MM
GO Bonds - Unlimited Tax	9/1/1999	9/1/2020	various	$15 MM	$15 MM
COP	6/1/1999	6/1/2024	3.90% - 5.35%	$35 MM	$35 MM

Chart 4
Short Term Debt and Financial Obligations:

Type of Obligation	Date Issued (or Incurred)	Final Maturity (or Term)	Interest Rate	Amount Issued	Amount Outstanding
TAN	7/2/1999	6/30/2000	3.10%	$65 MM	$0
TAN	7/5/2000	6/30/2001	3.05%	$65 MM	$65 MM
TAN	9/1/2000	8/31/2001	3.06%	$30 MM	$30 MM
Capital Lease	10/15/2000	10/15/2005	5.45%	$5 MM	$4.6 MM

Chart 5
Other Outstanding Debt

Type of Obligation	Date Issued	Final Maturity	Interest Rate	Amount Issued	Amount Outstanding
Sales Tax Bonds	9/1/1997	8/1/2007	3.80% - 5.10%	$10MM	$8 MM
Special Assessment Bonds	8/1/2000	8/1/2020	5.20%	$25MM	$25MM
Water Revenue Bonds*	10/1/2000	10/1/2025	5.30%	$5 MM	$5MM

* These bonds also carry a pledge of the issuer's General Obligation unlimited taxing ability in the event the water system revenues are insufficient to cover timely repayment of principal and interest.

Chart 6
Total Debt Service Schedule:

Year	General Obligation		COP/Lease		Total Debt Service
	Principal	Interest	Principal	Interest	
2001					
2002					
2003					
2004					
2005					
2006-2010					
2011-2015					
2016-2020					

Chart 7
Five -Year Capital Improvement Program
(FY2001 - 2005; $Mil)

PROJECTS	FISCAL YEAR					
	2001	2002	2003	2004	2005	Total
Road Improvements	$1.5	$0.5	$2.0	$2.0	$2.0	$8.0
Renovate Police Station	0.0	0.0	0.0	2.5	0.5	3.0
Expand Sewer Plant	0.0	0.0	5.0	1.0	1.0	7.0
School Roofs	0.7	0.3	1.0	0.0	0.0	2.0
TOTAL	2.2	0.8	8.0	5.5	3.5	20.0
FUNDING						
GO Bonds	$2.0	$0.0	$2.8	$3.5	$2.0	$10.3
Revenue Bonds	0.0	0.0	3.5	1.0	0.8	5.3
Grants	0.0	0.0	1.0	0.5	0.2	1.7
Pay As Go	0.2	0.5	0.7	0.5	0.5	2.4
TOTAL	2.2	0.5	8.0	5.5	3.5	19.7

Appendix A

NFMA Recommended Guidelines on Operating Data

General Obligation and Tax Supported Debt

The Appendix contains *NFMA Recommended Guidelines on Operating Data for General Obligation and Tax Supported Debt* and is provided as an addendum to the *NFMA Recommended Best Practices in Disclosure Guidelines for General Obligation and Tax Supported Debt ("RBP").* These guidelines serve to summarize and conveniently tabulate certain key utilization statistics, operating data, and supplemental financial information set forth in the RBP for use in both primary and secondary market disclosure. This Appendix is not intended to be a "one size fits all" solution for providing this data consistent with the RBP. Issuers or obligors are encouraged to modify and supplement this Appendix in accordance with their own disclosure requirements and information profile. **To obtain more complete disclosure guidelines, issuers and obligors are urged to consult the *NFMA Recommended Best Practices in Disclosure Guidelines for General Obligation and Tax Supported Debt***.

NFMA Recommended Guidelines on Operating Data

General Obligation Bonds and Tax Supported Debt

Part 1: Operating Data

Issuer Name							
Financial Officer Contact							
Telephone No.	( )						
Fiscal Year End							
Website URL *(if available)*	http://www.						
	Last Five Years					Comparative Benchmarks	
Economic Data	FYE	FYE	FYE	FYE	FYE	US	State
Per Capita income							
% Population below Poverty Level							
Median Household Income							
Ten Year History of Retail Sales							
Top 10 public/private employers							
• Name of employer							
• Number of employees							
Average annual Unemployment Rate							
Employment Mix by Industry							
Building Starts by Permits							
• Residential							
• Commercial							
• Industrial							
Monthly Unemployment Rates	Jan	Feb	Mar	Apr	May	June	
	Jul	Aug	Sep	Oct	Nov	Dec	
Demographic Statistics							
Decennial Population data							
Population Schedule by Age Group							
Population Schedule by Education							
Interim Population Data							

NFMA Recommended Guidelines on Operating Data

General Obligation Bonds and Tax Supported Debt

Part 2: Supplemental Financial Information

General Fund and Revenue Base Data	Last Five Fiscal Years				
	FYE	FYE	FYE	FYE	FYE
General Fund Revenues by Source					
General Fund Expenditures Categories					
Current Tax Collection Rate					
Tax Collection Rate					
Unreserved Fund Balance					
Unreserved Fund Balance/Expenditures					
(Note: Revenues should include Other					
Sources and expenditures should					
inlude Other Uses)					

Property Tax Base Values

Year	Real Property			Personal Property	Valuation	
	Residential	Commercial	Industrial		Assessed	Full

Top Ten Property Taxpayers

Company	Tax Assessment	No of Employees	Industry

National Federation of Municipal Analysts

TOP 25 REASONS TO DISCLOSE INFORMATION

Benefits of Disclosure: Complete, accurate and timely information is essential to the role performed by municipal analysts in evaluating credit risk. The NFMA strongly believes it is in the best interest of all governmental issuers to disclosure all material financial information and operating data to investors, and to do so on a regular basis. As demonstrated throughout all capital markets, issuers that disclose information on a fair and regular basis secure better market rates.

Set forth below are leading reasons why it is highly advantageous for all governmental issuers to provide complete, timely and accurate information to municipal analysts and investors.[1]

Market Factors

- Improved disclosure elicits wider bidding which extends liquidity and reduces borrowing costs, particularly in a rising interest rate environment
- Good disclosure facilitates investor relations and improves market access
- Good disclosure is consistent with issuer practices in all capital markets
- Accurate, timely and complete disclosure greatly lessens the need for regulation
- Good disclosure supports secondary market trading prices of related securities by broadening the underlying investor base
- Financial disclosure serves as a critical internal guide to promote effective financial management
- Reluctance to disclose erodes investor confidence in management
- Collectively, improved municipal disclosure strengthens the global competitive position of municipal bonds as an asset class
- Good disclosure serves as an effective compass to guide portfolio management which leads to improved demand for bonds and better borrowing terms
- Good disclosure promotes comparative analysis of governmental issuers which facilitates creation of peer group medians and benchmarks
- If favorable information exists, good disclosure amplifies a positive credit profile that will improve trading value and overall market access
- If unfavorable information exists, good disclosure demonstrates the full extent of management's grasp of financial problems and its ability to implement

remedial action

- Good disclosure is demonstrative of management sophistication and a pro-active approach to financial administration

Legal Factors

- Clear, accurate and timely disclosure promotes the efficient allocation of capital, a basic objective of our nation's securities markets
- Contrary to prior legal myth, issuers are not prevented from providing information beyond the bare minimum required by SEC Rule 15c2-1
- Clear and accurate disclosure promotes compliance with SEC Rule 10(b)(5)
- Clear and accurate disclosure promotes compliance with SEC Rule 15c2-12

Economic Factors

- Used in conjunction with a FAQ file [2] written disclosure increases productivity
- Good disclosure is wholly consistent with the market's expectations about the increased availability of information driven by the growth of the Internet
- Good disclosure is wholly consistent with the market's expectations about the ongoing evolution of good governance standards.

Administrative Factors

- Periodic disclosure is emblematic of responsible financial management
- Good disclosure promotes greater accountability and public trust in government
- Written disclosure promotes even-handed provision of information to all
- It makes considerable sense to leverage information already on tap to derive multiple benefits that attend good disclosure practices
- Good disclosure promotes a more informed citizenry which is essential to the effective management of democratic government

Notes

1. Derived from NFMA Position Paper on NASACT Proposal on Voluntary Interim Disclosure issued on October 27, 2004

2. FAQ stands for 'frequently asked questions'. Development of a FAQ file enables financial managers to distill answers to frequently asked questions into prepared text to avoid the need to provide answers to recurring questions over and over again.