MUNICIPAL SECURITIES DISCLOSURE
Selected Key Issues for Issuers & Officials

Presented to

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FIRST TIME:

"Control Person" Liability for Issuer Officials
(Joint & Several with Primary Violator)

- **Mayors of—**
  Harvey, Illinois
  Allen Park, Michigan

- **Shift in Burden of Proof**

- **SEC Need Only Prove Control, Not Knowledge**

- **Participation in Fraud Unnecessary**

CONTROL PERSON LIABILITY:

- **To Establish Successful Defense, "Control Persons" Must Prove—**
  - **"Good Faith"**
    —and—
  - **Did Not "Directly or Indirectly" Induce Action of Primary Violator**

CONTROL PERSON LIABILITY:

- **Poses Significant New Risks for Community Leaders—Mayors, Board Chairs, City Managers/Administrators, Department Heads**
- **Absolute "Control" Not Required**
- **Defense May Require Exercise of Oversight to Evidence "Good Faith"**
- **If Policies/Procedures Adopted & Implemented, May Be Helpful**

FIRST TIME:

Issuer Former CEO Fined and Barred for NOT Reading Official Statement He Signed

Not Charged with Knowledge of Misrepresentations

However, OS Contained Material Misstatements/ Omitted Material Information He Should Have Known

Only Charged with Negligence

Barred from Future Offerings; $10,000 Civil Penalty

(CEO of United Neighborhood Organization of Chicago)

"REASONABLE" RELIANCE ON PROFESSIONALS

Four Factors Applied by Courts:

- Complete Disclosure to Professional Regarding Issue
- Seeking Professional Advice as to Appropriateness of Conduct (Participation in Transaction Inadequate)
- Receipt of Advice that Conduct Is Appropriate (Not Merely Negative Assurance)
- Reliance on Advice in Good Faith

Miami Jury Verdict Found None of the Factors Present

RISK DISCLOSURE:

Governmental Issuer Alleged to Have Failed to Disclose—

Information Regarding Private Conduit Borrower

In Credit Enhanced Bond Issue

Generalized Risks Disclosed, BUT NOT Risks Specific to the Transaction

(Rhode Island Commerce Commission—Pending)
(Two Officials Settled—Barred & Civil Penalties)

NOTABLE:

Local Issuer Counsel

(Westlands, California, Water District & Ramapo, New York)

FIRST TIME:

Announced Intention to Coordinate with Justice Department

(City of Ramapo, New York)
(Criminal Action Includes Local Counsel)

FIRST TIME:

Local Official Pled Guilty to Criminal Charges of Securities Fraud

(City of Ramapo, New York, Executive Director of Development Corporation/Assistant Town Attorney)

FIRST TIME:

Local Official Found Guilty of Criminal Charges in Connection with Securities Fraud in Offerings

(City of Ramapo, New York, Town Supervisor)

11 Counts of Wire Fraud
8 Counts of Securities Fraud
1 Count of Conspiracy

Not Guilty of 1 Count of Securities Fraud and 1 Count of Wire Fraud

COMMON PROBLEM AREAS:

- **Overly Optimistic Information Regarding Economic Development Projects—**
  (*e.g.*, Wenatchee Events Center, Allen Park Movie Studio, Ramapo Baseball Stadium, Rhode Island EDC Private Online Game Company, Harvey Holiday Inn)

- **Assumptions & Other Information Supporting Projections & Expert Reports—**
  (Wenatchee Events Center, Public Health Trust)

COMMON PROBLEM AREAS:

- **Stale Information**
  (Allen Park, Public Health Trust)

- **Conflicts of Interest**
  (UNO Charter School Network, Harvey)

- **Insufficient Internal Controls**
  (South Miami, Public Health Trust)

- **Misleading Generalized Risk Disclosures**
  (Rhode Island Commerce Commission)

Amendments Proposed to SEC Rule 15c2-12

SEC Rule 15c2-12

- **Applies to Only Underwriters, Not Directly to Issuers**
- **But Underwriters Cannot Underwrite Bonds Unless Issuers Enter into Continuing Disclosure Agreements**
- **Issuers Must Agree to Make Annual Disclosure of Operating and Financial Information**
- **Issuers Must Also Agree to Make Disclosure within Ten Days of Certain Events**

Proposed Amendments

- **Added Two Proposed Events—**

(15) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

Proposed Amendments

- **Added Definition of "Financial Obligation"—**

The term financial obligation means a (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding. The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

THE END